Supreme Court, U. S.
FILED
AUG 12 1976
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 75-1687

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee for The Port of Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series, on its own behalf and on behalf of all holders of Consolidated Bonds of The Port Authority of New York and New Jersey and all others similarly situated,

Appellant,

v.

THE STATE OF NEW JERSEY, BRENDAN T. BYRNE, Governor of The State of New Jersey, and WILLIAM F. HYLAND, Attorney General of the State of New Jersey,

Appellees.

APPEAL FROM THE SUPREME COURT OF NEW JERSEY

VOLUME I

Pages 1a—528a

FILED MAY 21, 1976

PROBABLE JURISDICTION NOTED JUNE 28, 1976

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SUPERIOR COURT OF NEW JERSEY

BERGEN COUNTY

L-26861-73

UNITED TRUST COMPANY OF NEW YORK,
Plaintiff,

—*vs*—

STATE OF NEW JERSEY
(Brendan T. Byrne),
Defendant.

Apr.	30	1974	Complaint $60.00
June	30	1974	Order Ex. Time
July	16	1974	Ans. & C. Cl.
Aug.	2	1974	Ans. to Cl. Cl.
Oct.	24	1974	Order for Class Action
Oct.	24	1974	Affidavit
Nov.	15	1974	Affidavit
Dec.	10	1974	Order for Consolidation (L-2642-71)
Jan.	9	1975	Notice of Deps.
Mar.	27	1975	Order as to Deps. etc.
May	19	1975	Opinion
May	16	1975	Copy of Notice of Appeal, Meyner. L & V 5.00

Dated: 12 July, 1976

I hereby certify that the foregoing is a true copy of the original on file in my office.

Signature Illegible

Clerk

Docket Entries

SUPREME COURT OF NEW JERSEY

From Superior Ct. Law Div.

Trial Docket #L-26861-73

Docket # 11,498
PM
United States Trust Co., of N. Y. v:
Meyner, Landis & Verdon, Esqs.

Attorneys

State of N. J., Brendan T. Byrne, Governor of N. J., etal
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Theodore W. Kheel, Esq.
Howard Stern, Esq.
Patrick Falvey, Esq.

Attorneys

5/16/75	Notice of Motion for Direct Certification & Expedition.
5/16/75	Statement in lieu of Brief in Support of Motion.
5/16/75	Afft. in Support of Motion-J. Sinclair Armstrong.
5/16/75	Afft. in Support of Motion-John F. Thompson
5/16/75	Afft. of Service; Rec'd App. Div. Opinion
5/20/75	Cross Motion for Certification-Atty Gen.
5/16/75	Checklist M-824-74 Motion for Direct Cert. is Granted and Appellants Brief due 6-6-75 Respondents Brief due 14 days after Reply Brief 7 days after (if any).
5/28/75	Motion for Certification—Shavick, Esq. $5.00 Paid and Cert. of Serv.
5/28/75	Checklist: M-837-74 Motion for Cross Motion is granted (def-resp.)
5/28/75	M-847-74 Checklist Motion for Certification Granted 5-0.

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6/11/75	Daniel M. Gaby, Esq.—Shavick, Esq. Afft. Serv. Shavick, Esq.
6/ 6/75	Appellant's Brief—Appendix 4 copies deposition of J. Sinclair Armstrong: 9 copies of S. C. Briefs—findings of fact Meyner, Esq.
6/17/75	Afft. of Serv. Reiner, Esq. (Meyner, Esq.)
6/20/75	Brief of Def-resp. Cross App. State of N. J., Brendan T. Byrne—Wm. Hyland, Atty Gen. (Murray J. Laulicht, Esq.)
6/20/75	Rec'd Defendant's Trial Memorandum, Rec'd Defendant's Post Trial Memorandum, Rec'd Defendant's Proposed Findings of Fact, Rec'd Defendant's Reply Brief and Appendices, (Atty Gen.) Murray J. Laulicht, Esq.
6/20/75	Transcripts—6 vol @ 4 copies each
6/20/75	Brief for Intervening Defendant-Respondent, U. S. Trust Company of New York, Robert B. Meyner, Esq.
6/23/75	Brief for Port Authority Respondents, Francis A. Mulhern, Port Auth.
6/26/75	Notice of Motion to Strike defendants supplemental exhibits or in the alternative to supplement the record, and to supplement the record, Meyner, Esq.
6/26/75	Reply Brief for Appellants and brief on cross appeal, Meyner, Esq.
6/26/75	Memorandum in Support of Motion, Meyner, Esq.
7/ 1/75	Afft. of Service—Meyner, Esq. (U. S. Trust Co.) Gaby vs. Port of N. Y. Authority.

Docket Entries

7/ 1/75	Afft. of Service—Meyner, Esq. (U. S. Trust Co.) U. S. Trust vs. State, etc., etal.
7/ 3/75	Memorandum in Opposition to Motion, Atty Gen.
7/ 3/75	Notice of Motion for Leave to file oversized brief and ext. time to file reply brief, Atty Gen.
7/ 7/75	Notice of Motion to Relax Page Limitations Statement in Lieu of Brief in Support of Motion—Afft. in Support, Afft. Serv., Meyner, Esq.
7/11/75	Reply Brief, Lowenstein, Esq.
7/14/75	Plaintiffs' Reply Memorandum—Meyner, Esq.
7/22/75	Notice of Motion to Suppress Points I and II of Reply Brief of def-resp. and Cross-Appellants.
7/22/75	Memorandum in support of motion.
7/22/75	Afft. of Serv., Meyner, Landis & Verdon, Esqs.
7/29/75	Memorandum in Opposition to Motion to Suppress Points 1 and 2 of Reply Brief—Atty Gen.
9/ 2/75	Joint Appnx. Vol. VI—Meyner, Landis & Verdon, Esqs.
9/ 2/75	Checklist M-1067-74 Motion to strike is denied.
9/ 2/75	Checklist M-1068-74 Motion to supplement the record is granted.
9/ 2/75	Checklist M-1069-74 Motion for extension of time is granted.
9/ 2/75	Checklist M-1070-74 Motion to file oversized reply brief is granted.
9/ 2/75	Checklist M-1071-74 Motion to file oversized brief is granted.

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9/ 2/75	Checklist M-1072-74 Motion to suppress points 1 and 2 of reply brief is denied.
10/ 1/75	Supplemental Letter—Meyner, Landis & Verdon.
10/ 7/75	Afft. of Service of suppl. letter—Meyner, Landis.
2/25/76	Opinion—6-1-P.C.—Affirm—8 Pg. Pashman-Conc. Part-Diss Part.
3/ 8/76	Motion for Counsel Fees with Afft. & Brief & Shavick, Stern, Schotz, Steiger & Croland, Esqs. $5.
3/10/76	Afft. of Service on Motion for Counsel Fees—Shavick, Stern, Schotz, Steiger & Croland, Esqs.
3/11/76	Supp. Letter to Motion for Counsel Fees—Shavick, Esq.
3/22/76	Brief for Port Authority in Opposition to Motion for Counsel Fees—Mulhern, Esq.
4/19/76	Response to Motion for Counsel Fees—Mulhern.
4/26/76	Suppl. Letter—Howard Stern, Esq.
5/ 4/76	Motion for Counsel Fees *Denied;* M-925-75; 6-1.
5/14/76	Notice of Appeal to the U.S. Supreme Ct.
5/14/76	Afft. of Service—Meyner, Landis & Verdon, Esqs.
5/24/76	Notice of Appeal to the U.S. Supreme Ct.
5/24/76	Afft. of Service—Shavick, Stern, Schotz, Steiger & Croland, Esqs.

Complaint

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION — BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee for The Port Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series; on its own behalf and on behalf of all holders of Consolidated Bonds of The Port Authority of New York and New Jersey and all others similarly situated,

Plaintiff,

against

THE STATE OF NEW JERSEY; BRENDAN T. BYRNE, Governor of The State of New Jersey; and WILLIAM F. HYLAND, Attorney General of The State of New Jersey,

Defendants.

Plaintiff, United States Trust Company of New York (hereinafter referred to as the "Trust Company"), a corporation organized and existing under the laws of the State of New York, having its principal place of business at 45 Wall Street, New York, New York, for its complaint against the defendants says:

FIRST COUNT

1. The Trust Company is the Trustee for The Port Authority of New York and New Jersey (hereinafter referred to as "The Port Authority") Consolidated Bonds, Fortieth and Forty-First Series, and is also the holder, for its own account and as a fiduciary, of Consolidated Bonds of The Port Authority.

2. Defendant The State of New Jersey along with the State of New York, is a party to a contract with bondholders (including the plaintiff) made by the Legislatures of New Jersey and New York through concurring legislation becoming effective in 1962 and set forth in N.J.S.A. 32:1-35.55 and N.Y. Unconsol. Laws §6606, all as hereinafter described.

3. Defendant Brendan T. Byrne is the Governor of the State of New Jersey and in such capacity possesses the power to appoint Commissioners, to veto any and all action taken at meetings of The Port Authority by the Commissioners appointed by the Governor and generally to establish the policy, planning, guidance and direction for the operations of The Port Authority.

4. Defendant William F. Hyland is the Attorney General of the State of New Jersey and in such capacity is charged with the duty to uphold the Constitution of the State of New Jersey and the United States Constitution.

5. The Trust Company brings this action as the Trustee for The Port Authority Consolidated Bonds, Fortieth and Forty-First Series, pursuant to Section 8 of the Resolution Establishing the Fortieth Series of Consolidated Bonds, due 2008 adopted May 10, 1973 and the Resolution Establishing the Forty-First Series of Consolidated Bonds, due 2008 adopted September 13, 1973.

6. Pursuant to such Section 8 of the respective Resolutions adopted by The Port Authority the Trust Company is "authorized to act in its discretion to assure that all of the rights of and obligations to the holders of bonds of [such] Series are unconditionally recognized, protected and fulfilled." Such Resolutions also permit the Trust Company "to institute any action on behalf of the holders of bonds of

[such] Series against [The Port Authority] or others which it shall in its sole discretion deem advisable . . ."

7. The Trust Company also brings this action on its own behalf as the holder (in its own account, as custodian and in its several fiduciary capacities) of approximately $96,000,00 principal amount (as of April 15, 1974) of the Consolidated Bonds of The Port Authority and on behalf of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds.

8. As of April 15, 1974, approximately $1,600,000,000 principal amount of Consolidated Bonds of The Port Authority were outstanding and held by banks, trust companies, other financial institutions, pension funds and private individuals.

9. The members of the class of persons whose interests will be affected by the outcome of this action are so numerous that joinder of all members is impracticable.

10. The questions of law and fact raised by this action are common to all of the members of the class and the claims made by the Trust Company are typical of the claims of the class.

11. The Trust Company will fairly and adequately protect the interests of the class.

12. Inconsistent or varying adjudications with respect to individual members of the class would establish incompatible standards of conduct for parties opposing the class or substantially impair or impede their ability to protect their interests.

13. An adjudication with respect to the issues raised by the Trust Company will as a practical matter be dispositive of the interests of the other members of the class.

14. The defendants in this action have acted on grounds generally applicable to the class, thereby making appropriate declaratory and other relief with respect to the class as a whole.

15. This Court has jurisdiction over the claims asserted herein under N.J.S. 2A:16-50 et seq., the New Jersey Uniform Declaratory Judgments Act.

16. The Port Authority is a municipal corporate instrumentality of the State of New Jersey (N.J.S.A. 32:1-1 to 24) and of the State of New York (N.Y. Unconsol. Laws §§6401-6423), created in 1921 by compact between the two states with the consent of the Congress of the United States (Public Resolution No. 17, 67th Congress, First Session (42 Stat. 174)), pursuant to Article 1, Section 10, clause 3 of the United States Constitution.

17. The Compact between the States of New Jersey and New York in 1921 which created The Port Authority (the "Port Compact") stated that the development of the Port "will require the expenditure of large sums of money and the cordial cooperation of the States of New York and New Jersey in the encouragement of the investment of capital. . . ." Article VI authorized The Port Authority "to borrow money and secure the same by bonds or by mortgages." Article VII provided that "[The Port Authority] shall not pledge the credit of either state except by and with the authority of the legislature thereof." Article XV provided that "Unless and until the revenues from operations conducted by [The Port Authority] are adequate to meet all expenditures," the States would each appropriate up to

$100,000 a year to finance its operations. Thus the Port Compact, to which Congress consented, intended The Port Authority to be a self-supporting agency of State government.

18. The Port Authority secures the funds necessary for its various authorized projects primarily through the issuance of bonds. Since 1952 The Port Authority has issued 41 Series of Consolidated Bonds secured by the full faith and credit of The Port Authority, a pledge of the net revenues of all existing facilities of The Port Authority, the net revenues of new facilities financed through Consolidated Bonds, a general reserve fund and a consolidated bond reserve fund.

19. In 1962 the Legislatures of New Jersey and New York adopted concurring legislation (the "1962 Covenant") providing that:

> "The two states covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority, (a) the two states will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise)

> or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility; and (b) neither the states nor the port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth.
>
> 'Affected bonds' as used in this section shall mean bonds of the port authority issued or incurred by it from time to time for any of the purposes of this act or bonds as security for which there may or shall be pledged, in whole or in part, the general reserve fund or any reserve fund established by or pursuant to contract between the port authority and the holders of such bonds, or the revenues of the world trade center, Hudson tubes, Hudson tubes extensions or any other facility owned or operated by the port authority any surplus revenues of which would be payable into the general reserve fund, or bonds both so issued or incurred and so secured.
>
> 'Permitted purposes' as used in this section shall mean purposes in connection with (i) the Hudson tubes as authorized and limited on the effective date of this covenant and agreement, (ii) railroad freight transportation facilities or railroad freight terminal facilities, (iii) the construction, installation and maintenance of railroad tracks and related facilities on vehicular bridges owned by the port authority and (iv) any other railroad facility established, acquired, constructed or otherwise effectuated by the port authority (including but not limited to Hudson tubes

extensions) as to which the port authority shall have first certified either that said other railroad facility is self-supporting as hereinafter defined or, if not, that at the end of the preceding calendar year the general reserve fund contained an amount equal to one-tenth of the par value of bonds of the port authority which were outstanding at said year end and which were legal for investment as defined in the general reserve fund statutes and that the group of facilities consisting of such other railroad facility and of all prior other railroad facilities will not produce deficits in excess of permitted deficits as hereinafter defined. 'Prior other railroad facilities' at the time of any certification by the port authority hereunder shall mean all the railroad facilities described in subdivisions (i) and (iv) of this paragraph which were theretofore established, acquired, constructed or otherwise effectuated by the port authority any surplus revenues of which at such time would be payable into the general reserve fund.

An other railroad facility shall be deemed to be 'self-supporting' as of the time of any certification hereunder if the amount estimated by the port authority for the ensuing ten years to be the average annual net income (computed without deduction for debt service) derived from or incidental to such facility equals or exceeds the amount estimated by the port authority for such ten years to be the average annual debt service upon bonds for purposes in connection with such proposed facility.

'Deficits' of a group of railroad facilities, as used in this section, shall mean the amount estimated by the port authority for the ensuing ten years to be the average annual combined debt service upon

bonds for purposes in connection with the railroad facilities of such group less the amount estimated by the port authority for such ten years to be the average annual combined net income (computed without deduction for debt service) derived from or incidental to such railroad facilities or plus the amount estimated by the port authority for such ten years to be the average annual combined net losses (computed without deduction for debt service) sustained from or incidental to such railroad facilities; the estimate of deficits thus arrived at shall not be effective unless and until concurred in, in writing, by the governors of the said two states.

'Permitted deficits' of a group of railroad facilities as used in this section, shall mean deficits as of the time of any certification hereunder which do not exceed (A) such amount or amounts of deficits as of the time of any certification hereunder for the payment of which one or both of the two states, in connection with the proposed other railroad facility as to which the certification is made and in connection with prior other railroad facilites, has made adequate, secure and effective provision for the duration of the period for which the port authority is liable for such deficits, plus (B) the greater of the following two amounts: (1) an amount equal to one-tenth of the amount in the general reserve fund at the end of the preceding calendar year, diminished by an amount equal to one per cent of the principal amount of all bonds of the port authority outstanding at the end of said preceding calendar year the proceeds of which shall have been applied for purposes in connection with the facilities of such group or (2) an amount equal to the sum of one-tenth of the

diminished one-tenth amount calculated under clause (1) of this sentence, plus one percent of the equity, at the end of the said preceding calendar year, of the port authority in its vehicular bridges and tunnels and in all other facilities owned and operated by it (not including railroad cars financed by state-guaranteed bonds) except those of the aforesaid group of railroad facilities. Equity of the port authority in facilities as to which any calculation of equity shall be made shall mean the principal amount of bonds of the port authority retired from port authority revenues or reserves or both which have been derived from the operation of its facilities and the investment of its funds and not from governmental or other subsidy payments, the proceeds of which retired bonds shall have been applied for purposes in connection with such facilities.

Each certification by the port authority hereunder shall be made at the time of the issuance of its first bonds for permitted purposes in connection with a proposed other railroad facility which bonds would be secured in whole or in part by the aforesaid pledged rentals, tolls, fares, fees, charges, revenues or reserves, or at such time, prior to such issuance, as any application of such pledged rentals, tolls, fares, fees, charges, revenues or reserves for purposes in connection with such proposed other railroad facility would otherwise be permitted or required. Anything herein to the contrary notwithstanding, any such certification by the port authority hereunder shall not be effective unless and until affirmatively concurred in, in writing, by the governors of the said two states." N.J.S.A. 32:1-35.55; N.Y. Unconsol. Laws § 6606.

20. The 1962 Covenant set forth in paragraph 19 of this Complaint was enacted into law since in the early 1960's it was proposed that The Port Authority be authorized to assume the responsibility for a commuter rail line by acquiring the deficit generating operations of the Hudson & Manhattan Railroad Company (now called, and referred to herein as the "PATH System"). This interurban electric railroad system has termini in Newark, Hoboken and Manhattan.

21. In connection with the legislation which authorized The Port Authority to assume responsibility for the PATH System, The Port Authority had advised the New York and New Jersey Legislatures that the credit of The Port Authority would be impaired by such an undertaking of an anticipated continuing deficit facility unless the States would enter into an enforceable contract with The Port Authority bondholders which would protect bondholders against dilution of already pledged revenues and reserves by any additional passenger rail deficits beyond those of the basic PATH System. The 1962 Covenant was the legislation finally adopted.

22. The Port Authority advised potential investors of the existence of and protection afforded by the 1962 Covenant in Official Statements distributed in connection with each of the following Consolidated Bond financings:

a) $35,000,000 Consolidated Bonds Twentieth Series, Due 1993 (First Installment) April 24, 1962;

b) $25,000,000 Consolidated Bonds Twenty-First Series, Due 1993 (First Installment) October 3, 1962;

c) $25,000,000 Consolidated Bonds Twenty-Second Series, Due 1993 (First Installment) December 12, 1962;

d) $25,000,000 Consolidated Bonds Twenty-Third Series, Due 1994 (First Installment) May 7, 1963;

e) $25,000,000 Consolidated Bonds Twenty-Fourth Series, Due 1994 (First Installment) October 16, 1963;

f) $30,000,000 Consolidated Bonds Twenty-Fifth Series, Due 1965-1984, February 13, 1964;

g) $35,000,000 Consolidated Bonds Twenty-Sixth Series, Due 1995 (First Installment) May 26, 1964;

h) $25,000,000 Consolidated Bonds Twenty-Seventh Series, Due 1995 (First Installment) November 10, 1964;

i) $25,000,000 Consolidated Bonds Twenty-Eighth Series, Due 1996 (First Installment) January 11, 1965;

j) $25,000,000 Consolidated Bonds Twenty-Ninth Series, Due 1996 (First Installment) May 27, 1965;

k) $25,000,000 Consolidated Bonds Thirtieth Series, Due 1998 (First Installment) October 27, 1965;

l) $100,000,000 Consolidated Bonds Thirty-First Series, Due 2002 (First Installment) March 22, 1967;

m) $100,000,000 Consolidated Bonds Thirty-Second Series, Due 2003 (First Installment) February 26, 1968;

n) $100,000,000 Consolidated Bonds Thirty-Third Series, Due 2003 (First Installment) July 31, 1968;

o) $100,000,000 Consolidated Bonds Thirty-Fourth Series, Due 2003 (First Installment) December 17, 1968;

p) $100,000,000 Consolidated Bonds Thirty-Fifth Series, Due 2005 (First Installment) August 26, 1970;

q) $50,000,000 Consolidated Bonds Thirty-Sixth Series, Due 2005 (First Installment) November 24, 1970;

r) $100,000,000 Consolidated Bonds Thirty-Seventh Series, Due 2006 (First Installment) February 18, 1971;

s) $100,000,000 Consolidated Bonds Thirty-Eighth Series, Due 2006 (First Installment) October 13, 1971;

t) $150,000,000 Consolidated Bonds Thirty-Ninth Series, Due 2007 (First Installment) February 2, 1972.

23. The Port Authority's advice to potential investors described in paragraph 22 of this Complaint, was substantially equivalent to the following disclosure, contained in the Official Statement for the Thirty-Ninth Series Consolidated Bonds:

> "In connection with the legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes System, the Port Authority had advised the Legislatures of both States that the credit of the Port Authority would be impaired by such an undertaking of an anticipated perpetual deficit facility unless the States would enter into an enforceable contract with the Port Authority bondholders which would grant assurances against dilution of already pledged revenues and reserves by any additional passenger rail deficits beyond those of the basic Hudson Tubes system. The legislation as finally adopted includes such statutory covenants. The covenants are between the two States and with the holders of certain described 'affected' bonds which include all Consolidated Bonds including those of the present offering. The contract prohibits the application of any revenues or reserves pledged to such bonds (which includes all existing revenues, other than rentals under the New York State's Com-

muter Railroad Car Program described on pp. 18-19, and all existing reserves) for any additional passenger railroad purpose beyond the basic Hudson Tubes, as defined, without the consent of the holders of such affected bonds as provided in their contract with the Authority unless the Port Authority shall have first certified the eligibility of such additional railroad, whether it be a Hudson Tubes extension, as defined, or new railroad facility. To be eligible the Port Authority must determine either that the proposed additional passenger railroad facility is self-supporting or, if not, that at the end of the preceding calendar year the General Reserve Fund contained the full statutory amount and that for the ensuing ten years the estimated average annual deficits from the proposed additional passenger railroad facility and any then existing Port Authority passenger railroad facility (including the basic Hudson Tubes) would not in the aggregate exceed an amount equal to one-tenth of the amount in the General Reserve Fund at the prior year end. Certain adjustments to this figure are provided by the statute. For example, the amount equal to one-tenth of the General Reserve Fund is to be diminished by an amount equal to 1% of the principal amount of Port Authority bonds the proceeds of which shall have been applied for passenger railroad purposes; this prevents the enlargement of deficit capacity by bonds issued in connection with a deficit passenger railroad facility. Furthermore, if at some time in the future the adjusted 10% of the General Reserve Fund should be exceeded by an amount equal to 1% of the Port Authority's equity, as defined in the statutes, augmented by 1/10 of that

adjusted 10%, then the augmented 1% of the equity may be used as the limiting figure instead of the percentage of the General Reserve Fund. Section 6 of the 1962 legislation (See Appendix III) should be studied for the exact terms of the statutory covenant."

24. Purchasers of Consolidated Bonds of The Port Authority following enactment of the 1962 Covenant relied on the 1962 Covenant in making their purchase.

25. The legislation embodying the 1962 Covenant was amended effective May 10, 1973 by the States of New Jersey and New York (Ch. 208, Laws of New Jersey 1972, Ch. 1003, Laws of New York 1972, Ch. 318, Laws of New York 1973), to limit the application of the 1962 Covenant to obligations of The Port Authority issued before May 10, 1973. Since Consolidated Bonds issued prior to that date have varying maturity dates from 1993 to 2007, the 1962 Covenant remains binding on The Port Authority, and, thereby, affords protection through 2007 for the bonds of the Fortieth Series and subsequent issues even though it does not specifically apply to such bonds.

26. The Port Authority advised potential investors of the existence of and continued protection afforded by the 1962 Covenant in Official Statements distributed in connection with the Fortieth and Forty-First Series of Consolidated Bonds as follows:

> "The statutory covenant against dilution of pledged revenues and reserves by additional passenger railroad facilities, which is discussed in the paragraph quoted above, remains in effect with respect to affected bonds, and remains binding on the Authority although it does not apply to the bonds

of the present offering. The legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes system was amended, effective May 10, 1973, by the States of New York and New Jersey (Ch. 1003, Laws of New York 1972, Ch. 318, Laws of New York 1973; Ch. 208, Laws of New Jersey). The New Jersey amendment, when introduced in the New Jersey Assembly, was accompanied by a statement that the bill was intended to preclude the application of the covenant to holders of bonds newly issued after its effective date, while maintaining in status quo the rights of the holders of the bonds issued after March 27, 1962 (the effective date of the covenant legislation) but prior to the effective date of the amendment."

27. Purchasers of Consolidated Bonds of The Port Authority following the prospective repeal of the 1962 Covenant relied on the continued protection afforded by the 1962 Covenant in making their purchase.

28. On April 30, 1974, defendant Byrne signed into law an Act of the Legislature of the State of New Jersey (Assembly Bill No. 1304) (the "Act").

29. The Act purports to repeal the 1962 Covenant retroactively to the date of its enactment, to be effective upon the passage of concurring legislation by the State of New York.

30. Although effectiveness of the Act is conditioned upon concurring action by the State of New York, as a result of the expressed intent of defendant Byrne and the Legislature of the State of New Jersey to pass the Act and as a result of the passage of the Act the contract between the States of New York and New Jersey and holders of

Consolidated Bonds has been impaired and the secondary market for Consolidated Bonds of The Port Authority has been and will continue to be adversely affected to the detriment of the Trust Company and all holders of Consolidated Bonds of The Port Authority.

31. The 1962 Covenant constitutes a contract as that term is used in Article 4, Section 7, paragraph 3 of the New Jersey Constitution.

32. The passage of the Act alleged in paragraph 28 of this Complaint constitutes an impairment of the contract among the States of New Jersey and New York and all holders of Consolidated Bonds of The Port Authority, in violation of Article 4, Section 7, paragraph 3 of the New Jersey Constitution.

SECOND COUNT

1. The Trust Company repeats and realleges paragraphs 1 through 30 of the First Count of this Complaint as if set forth fully herein.

2. The 1962 Covenant constitutes a contract as that term is used in Article 1, Section 10, Clause 1 of the United States Constitution.

3. The passage of the Act alleged in paragraph 28 of this Complaint constitutes an impairment of the contract among the States of New Jersey and New York and all holders of Consolidated Bonds of The Port Authority, in violation of Article 1, Section 10, Clause 1 of the United States Constitution.

THIRD COUNT

1. The Trust Company repeats and realleges paragraphs 1 through 30 of the First Count of this Complaint as if set forth fully herein.

2. The 1962 Covenant is property as that term is used in Article 1, paragraphs 1 and 20 of the New Jersey Constitution.

3. The passage of the Act alleged in paragraph 28 of this Complaint constitutes a taking of property of the holders of Consolidated Bonds of The Port Authority for public use without just compensation in violation of Article 1, paragraph 1 and Article 1, paragraph 20 of the New Jersey Constitution.

FOURTH COUNT

1. The Trust Company repeats and realleges paragraphs 1 through 30 of the First Count of this Complaint as if set forth fully herein.

2. The 1962 Covenant is property as that term is used in the Fifth and Fourteenth Amendments to the United States Constitution.

3. The passage of the Act alleged in paragraph 28 of this Complaint constitutes a taking of private property of the holders of Consolidated Bonds of The Port Authority without just compensation in violation of the Fifth Amendment and the Fourteenth Amendment to the United States Constitution.

WHEREFORE, The Trust Company demands:

(a) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of Article IV, Section 7, paragraph 3 of the New Jersey Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(b) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of Article I, Section

10, Clause 1 of the United States Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(c) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of Article I, paragraphs 1 and 20 of the New Jersey Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(d) A declaratory judgment that the enactment of Assembly Bill No. 1304 was in violation of the Fifth and Fourteenth Amendments to the United States Constitution and that as a consequence thereof Assembly Bill No. 1304 was not lawfully enacted, is void and is of no consequence or effect.

(e) Such other and further relief as the Court may deem just and proper.

Dated: Newark, New Jersey
April 30, 1974

MEYNER, LANDIS & VERDON
Attorneys for Plaintiff

By ROBERT B. MEYNER
Robert B. Meyner

Of Counsel:
CARTER, LEDYARD & MILBURN
2 Wall Street
New York, New York 10005

Answer and Counterclaim

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNT

UNITED STATES TRUST COMPANY OF NEW YORK, etc.,
Plaintiff,

—vs—

THE STATE OF NEW JERSEY, et als.,
Defendants.

Defendants, answering plaintiff's complaint, say:

FIRST COUNT

1. They admit that The Trust Company is The Trustee for the Fortieth and Forty-First Series of Port Authority Consolidated Bonds and they deny knowledge or information sufficient to form a belief with respect to the truth of the allegation that The Trust Company is the holder of Consolidated Bonds of The Port Authority.

2. They deny the allegations of paragraph 2, except that they admit that the concurring legislation referred to therein was enacted by the respective Legislatures of New Jersey and New York.

3. They deny the allegations of paragraph 3, except that they admit that defendant Byrne is the Governor of the State of New Jersey and in such capacity possesses the power to appoint six Commissioners of The Port Authority by and with the advice and consent of the Senate of New Jersey and to veto action taken by the Commissioners appointed from New Jersey and recited in minutes of Port Authority meetings.

4. They admit the allegations of paragraph 4.

5. They admit that plaintiff purports to bring this action on the basis alleged.

6. They admit the allegations of paragraph 6.

7. They deny knowledge or information sufficient to form a belief with respect to the truth of the allegations of paragraph 7, except that they admit that the plaintiff purports to bring this action on the basis alleged.

8. They deny knowledge or information sufficient to form a belief with respect to the truth of the allegations of paragraph 8.

9. They admit the allegations of paragraph 9.

10. They admit that the questions raised by this action, including the counterclaim, are common to all members of the class or classes and that the claims made by plaintiff are typical of the claims of the class or classes.

11. They admit on information and belief the allegations of paragraph 11.

12. They admit the allegations of paragraph 12.

13. They admit on information and belief that adjudication with respect to the issues raised by the complaint and counterclaim will as a practical matter be dispositive of the interests of the other members of the class or classes.

14. They admit the allegations of paragraph 14.

15. They admit the allegations of paragraph 15.

16. They admit the allegations of paragraph 16 and they allege that the consent of the Congress was also given pursuant to Article 1, Section 8, Clause 3 of the Constitution of the United States.

17. They admit that the Compact contains the provisions alleged in the first four sentences contained in paragraph 17, but they refer to the entire Compact for the full terms and legal effect thereof. They deny the last sentence of paragraph 17.

18. They deny the first sentence of paragraph 18 and admit the second sentence of paragraph 18.

19. They admit the allegations of paragraph 19.

20. They deny the first sentence of paragraph 20 and admit the second sentence of paragraph 20.

21. They deny the allegations of paragraph 21, except that they admit that the advice alleged therein was given to the Legislatures of New York and New Jersey by certain members of the then management of The Port Authority and they refer to the entire testimony for the full terms and effect thereof.

22. They deny the allegations of paragraph 22, except that they admit that the Official Statements listed therein refer to the 1962 Covenant and they refer to the entire Official Statements for the full terms and effect thereof.

23. They deny the allegations of paragraph 23, except that they admit that a statement similar in substance to the alleged statement was contained in the Official Statements referred to in paragraphs 22 and 23 and they refer to the entire Official Statements for the full terms and effect thereof.

24. They deny the allegations of paragraph 24.

25. They deny the allegations of paragraph 25.

26. They deny the allegations of paragraph 26, except that they admit that the Official Statements referred to

therein contained the statement quoted therein and they refer to the entire Official Statements for the full terms and effect thereof. Further answering paragraph 26, they allege that the Official Statements referred to therein explicitly stated that the statement quoted in paragraph 23 of the complaint *"does not apply to bonds of the present offering"* (emphasis in original).

27. They deny the allegations of paragraph 27.

28. They admit the allegations of paragraph 28.

29. They deny the allegations of paragraph 29.

30. They deny the allegations of paragraph 30, except that they admit that the effectiveness of the Act (Chapter 25 of the Laws of New Jersey 1974, hereinafter "the 1974 Act") is conditioned upon concurring action by the State of New York and they allege that New York has taken such concurring action by enacting Chapter 993 of the Laws of New York 1974, which is substantially identical to the 1974 Act.

31. They deny the allegations of paragraph 31.

32. They deny the allegations of paragraph 32.

SECOND COUNT

1. They repeat and reallege, as if set forth herein at length, their answer to paragraphs 1 through 30 of the First Count.

2. They deny the allegations of paragraph 2.

3. They deny the allegations of paragraph 3.

THIRD COUNT

1. They repeat and reallege, as if set forth herein at length, their answer to paragraphs 1 through 30 of the First Count.

2. They deny the allegations of paragraph 2.

3. They deny the allegations of paragraph 3.

FOURTH COUNT

1. They repeat and reallege, as if set forth herein at length, their answer to paragraphs 1 through 30 of the First Count.

2. They deny the allegations of paragraph 2.

3. They deny the allegations of paragraph 3.

FIRST SEPARATE DEFENSE

The complaint fails to state a claim for relief against Governor Byrne or Attorney General Hyland.

SECOND SEPARATE DEFENSE

The 1974 Act constitutes a reasonable exercise of the police powers of the State of New Jersey to protect the health, safety and welfare of its citizens. These police powers are fundamental to the sovereignty of the State and cannot be abdicated.

THIRD SEPARATE DEFENSE

1. Pursuant to the Interstate Commerce and Interstate Compact clauses of the Constitution of the United States, Congress consented to the Port Authority Compact and Comprehensive Plan.

2. The Preamble to the Port Authority Compact, to which Congress consented, provided:

> "It is confidently believed that a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey."

3. Subparagraph b of the 1962 Covenant (which was repealed by the 1974 Act) violated the provisions of the Port Authority Compact because it substantially precluded participation by The Port Authority in the field of passenger railroad operations other than the PATH system and thereby impeded the ability of The Port Authority to effect "a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York".

4. Subparagraph b of the 1962 Covenant was unconstitutional and invalid because Congress never consented to the limitations imposed by this provision upon The Port Authority or the burden imposed by this provision upon interstate commerce in the Port District.

FOURTH SEPARATE DEFENSE

1. The 1974 Act repealed only that part of the 1962 Covenant (subparagraph b) which substantially precluded The Port Authority's participation in passenger railroad operations other than the PATH system.

2. The 1974 Act does not purport to repeal or impair the primary obligation of The Port Authority to its bondholders, which is to pay interest and principal when due.

3. The 1974 Act does not purport to repeal or impair that part of the 1962 Covenant (subparagraph a) which provides that the States of New Jersey and New York

> "will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise), or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility."

4. The 1974 Act does not purport to repeal or impair Section 3 of the Consolidated Bond Resolution (prohibiting the issuance of Consolidated Bonds unless revenues are at least 1.3 times debt service) or Section 7 of the Resolutions authorizing specific series of Consolidated Bonds (prohibiting the issuance of bonds secured by the General Reserve Fund for any additional facility unless the Authority certifies that the issuance "will not . . . materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments . . . including its undertakings to the holders of Consolidated Bonds").

5. The 1974 Act does not, therefore, impair the obligation of a contract or take property within the meaning of the Constitutions of the United States or New Jersey.

FIFTH SEPARATE DEFENSE

1. Bonds isued by The Port Authority do not refer to the 1962 Covenant. Rather, the bonds state that they are issued "in conformity with the Compact . . . and the various statutes of [New Jersey and New York] amendatory thereof and supplemental thereto."

2. Article VII of the Port Authority Compact, as approved by the Congress, provides:

> "The port authority shall have such additional powers and duties as may hereafter be delegated or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other."

3. Port Authority bonds were purchased with notice that the Legislatures of New Jersey and New York reserved the powers to impose additional duties upon The Port Authority.

4. The 1974 Act constitutes a permissible exercise by the States of New Jersey and New York of their specifically reserved powers to impose additional duties upon The Port Authority.

SIXTH SEPARATE DEFENSE

1. The Port Authority's powers and responsibilities pursuant to the Port Authority Compact include provision of passenger transportation facilities within the Port District. In exercising those powers and responsibilities to date, The Port Authority has been principally concerned with providing facilities for vehicular traffic. Such vehicular traffic has occasioned and is integrally related to health, energy, environmental, traffic, and transportation

crises within the State of New Jersey and the Port District generally.

2. Because of these crises, the Legislature of the State of New Jersey concluded that The Port Authority must undertake larger responsibilities for alternative modes of transportation, to assure balanced transportation within the Port District. That legislative determination was both reasonable and in no way prohibited by the 1962 Covenant which purported to limit Port Authority activity as to passenger railroads only.

3. In light of the aforesaid legislative judgment, and the paramount importance of transportation to the health, economic vitality and environment of the citizens of the State, it was reasonable for the Legislature further to determine, as it did in adopting the 1974 Act, that the decision as to what transportation systems and combinations thereof are best suited to relieve the crises referred to in paragraph 1 ought not be prejudiced by the preclusion of further Port Authority financing for passenger railroad systems.

SEVENTH SEPARATE DEFENSE

1. The 1962 Covenant was enacted as part of substantially identical New Jersey and New York statutes entitled "An Act to provide for the financing and effectuation by the Port of New York Authority of a port development project, consisting of the Hudson tubes, the Hudson ' bes extensions and a world trade center, for co-ordinating, facilitating and promoting the transportation of persons and the flow and exchange of trade and commerce in and through the Port of New York District, and agreeing with the State of New York with respect thereto."

2. Pursuant to the 1962 legislation, The Port Authority assumed for the first time a significant role in the operation of a passenger railroad facility (now the PATH system) and embarked upon the development, construction and operation of the World Trade Center.

3. Since the adoption of the 1962 legislation, including the Covenant contained therein, The Port Authority has accumulated considerable experience in the operation of a passenger railroad facility, construction of the World Trade Center (at a total projected cost of about $850,000,000) has been substantially completed and The Port Authority has completed many other projects, including substantial redevelopment projects at the Authority's three major airports. These developments have materially increased the assets, reserves and revenues of The Port Authority from what they were in 1962.

4. Since 1962, New Jersey and New York generally, and the Port District in particular, have experienced severe health, energy, environmental, traffic and transportation crises resulting from excessive use of motor vehicles that were not foreseen when the 1962 legislation, referred to in paragraph 1, was enacted. These crises were particularly acute in the latter part of 1973 and the first quarter of 1974 —immediately prior to the adoption of the 1974 Act—as a result of the extreme shortage of motor gasoline, which seriously impaired the physical and economic stability of the Port District.

5. By reason of the changed conditions since 1962 referred to in paragraphs 3 and 4, the Legislature of the State of New Jersey could reasonably have concluded that the continued prohibition, embodied in subparagraph (b) of the 1962 Covenant, of further participation by the Port Authority in passenger railroad facilities and operations

had become contrary to the public policy of this State and that this part of the 1962 Covenant should be repealed, as it was by the 1974 Act.

WHEREFORE, defendants demand judgment dismissing the complaint.

COUNTERCLAIM

Defendant The State of New Jersey, counterclaiming against plaintiff and the class of Port Authority bondholders represented by it, says:

1. This is a counterclaim for a declaratory judgment that Chapter 25 of the Laws of New Jersey 1974 (the 1974 Act challenged herein by plaintiff) and the substantially identical Chapter 993 of the Laws of New York 1974 are in all respects valid and constitutional.

2. This counterclaim is brought as a class action against plaintiff and the class or classes represented by it, consisting "of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds." Class action treatment of this counterclaim is appropriate for the reasons alleged in paragraphs 8 through 14 of the complaint and the answer thereto, which are incorporated herein by reference.

3. Defendant repeats and realleges, as if set forth herein at length, each of the allegations of the Second through the Seventh Separate Defenses of the answer.

4. The statutes referred to in paragraph 1 of this counterclaim do not impair the obligation of any contract with or take the property of plaintiff or the class or classes

represented by it and do not otherwise violate any provision of the Constitutions of the United States, New Jersey or New York.

WHEREFORE, the State of New Jersey demands:

(a) A declaratory judgment that Chapter 25 of the Laws of New Jersey 1974 and Chapter 993 of the Laws of New York 1974 are in all respects valid and constitutional; and

(b) Such other and further relief as the Court may deem just and proper.

WILLIAM F. HYLAND
Attorney General of the
State of New Jersey
Attorney for Defendants

By: Michael I. Sovern
Murray J. Laulicht
Harold Edgar
Special Counsel for
Defendants

Dated: July 15, 1974

[Certificate of service omitted in printing]

Answer to Counterclaim

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, as Trustee for The Port Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series; on its own behalf and on behalf of all holders of Consolidated Bonds of The Port Authority of New York and New Jersey and all others similarly situated,

Plaintiff,

vs.

THE STATE OF NEW JERSEY; BRENDAN T. BYRNE, Governor of the State of New Jersey; and WILLIAM F. HYLAND, Attorney General of the State of New Jersey,

Defendants.

Plaintiff, United States Trust Company of New York, by way of Answer to the Counterclaim of defendant, The State of New Jersey, says:

1. Plaintiff denies that Chapter 25 of the Laws of New Jersey 1974 is valid and constitutional. Plaintiff further denies that this Court has jurisdiction to determine the validity of Chapter 993 of the Laws of New York 1974.

2. Plaintiff admits that it represents a class consisting "of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds" and that class action treatment of this counterclaim is appropriate.

Answer to Counterclaim

3. As to the allegations of the Second through Seventh Separate Defenses repeated and realleged by defendant The State of New Jersey in Paragraph 3 of its Counterclaim plaintiff says:

AS TO THE SECOND SEPARATE DEFENSE

1. Plaintiff denies the allegations contained therein.

AS TO THE THIRD SEPARATE DEFENSE

1. Plaintiff admits that Congress consented to the Port Authority Compact and Comprehensive Plan pursuant to the Compact Clause of the Constitution of the United States. Plaintiff denies that Congressional consent was required or given pursuant to the Interstate Commerce Clause of the Constitution of the United States.

2. Plaintiff admits that the Preamble to the Compact contains the provision as set forth by the defendant but refers to the entire Preamble and the entire Compact for their full terms and legal effect.

3. Plaintiff denies the allegations contained in Paragraph 3 of the Third Separate Defense.

4. Plaintiff denies the allegations contained in Paragraph 4 of the Third Separate Defense.

AS TO THE FOURTH SEPARATE DEFENSE

1. Plaintiff denies the allegations contained in Paragraph 1 of the Fourth Separate Defense but admits that the 1974 Act repealed only Subparagraph b of the 1962 Covenant.

2. Plaintiff denies the allegations contained in Paragraph 2 of the Fourth Separate Defense.

3. Plaintiff admits the allegations contained in Paragraph 3 of the Fourth Separate Defense and refers to the 1974 Act for its terms and legal effect.

4. Plaintiff admits the allegations contained in Paragraph 4 of the Fourth Separate Defense and refers to the 1974 Act for its terms and legal effect.

5. Plaintiff denies the allegations contained in Paragraph 5 of the Fourth Separate Defense.

As To The Fifth Separate Defense

1. Plaintiff refers to the bonds issued by the Port Authority, the Official Statements published by the Port Authority, the Compact and the various statutes of New Jersey and New York amendatory thereof and supplemental thereto for their terms and legal effect.

2. Plaintiff admits that Article VII of the Port Authority Compact contains the provision as set forth by the defendant but refers to the entire Compact and amendatory and supplemental legislation for their full terms and legal effect.

3. Plaintiff denies the allegations contained in Paragraph 3 of the Fifth Separate Defense.

4. Plaintiff denies the allegations contained in Paragraph 4 of the Fifth Separate Defense.

As To The Sixth Separate Defense

1. With respect to the first sentence of Paragraph 1 of the Sixth Separate Defense, plaintiff refers to the Compact for its full terms and legal effect. Plaintiff denies the allegations contained in the second sentence of Paragraph 1 of the Sixth Separate Defense. Plaintiff denies knowledge

or information sufficient to form a belief with respect to the allegations contained in the third sentence of Paragraph 1 of the Sixth Separate Defense.

2. Plaintiff denies the allegations contained in Paragraph 2 of the Sixth Separate Defense.

3. Plaintiff denies the allegations contained in Paragraph 3 of the Sixth Separate Defense.

As To The Seventh Separate Defense

1. Plaintiff admits the allegations contained in Paragraph 1 of the Seventh Separate Defense and refers to the said statutes for their terms and legal effect.

2. Plaintiff admits that the 1962 legislation permitted the Port Authority to embark upon the development, construction and operation of the World Trade Center and to assume a significant role in the operation of a passenger railroad facility (now the PATH system) but denies knowledge or information sufficient to form a belief as to whether this legislation was the first time that the Port Authority assumed a significant role in the operation of a passenger railroad facility.

3. Plaintiff denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraph 3 of the Seventh Separate Defense.

4. Plaintiff denies knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraph 4 of the Seventh Separate Defense.

5. Plaintiff denies the allegations contained in Paragraph 5 of the Seventh Separate Defense.

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4. Plaintiff denies the allegations contained in Paragraph 4 of the Counterclaim.

Answer to Counterclaim

AFFIRMATIVE DEFENSES TO COUNTERCLAIM

First Affirmative Defense

The State of New Jersey is estopped from challenging the validity of the 1962 Covenant since during the twelve years subsequent to the enactment of this legislation over one billion dollars of Port Authority obligations were issued by the Port Authority pursuant to the provisions of the 1962 Covenant and were purchased by plaintiff and the class it represents based upon the Covenant.

Second Affirmative Defense

The State of New Jersey is barred from attacking the validity of the 1962 Covenant based upon laches due to its failure to assert its claim for twelve years.

Third Affirmative Defense

The State of New Jersey is barred from attacking the validity of the 1962 Covenant based upon waiver.

Meyner, Landis & Verdon
Attorneys for Plaintiff

Robert B. Meyner
Robert B. Meyner

Of Counsel:

Carter, Ledyard & Milburn, Esqs.
2 Wall Street
New York, New York 10005

[Certificate of Service omitted in printing.]

Consent Order

SUPERIOR COURT OF NEW JERSEY

Law Division—Bergen County

United States Trust Company of New York, as Trustee for the Port Authority of New York and New Jersey Consolidated Bonds, Fortieth and Forty-First Series; on its own behalf and on behalf of all holders of Consolidated Bonds of the Port Authority of New York and New Jersey and all others similarly situated,

Plaintiff,

vs.

The State of New Jersey: Brendan T. Byrne, Governor of the State of New Jersey; and William F. Hyland, Attorney General of the State of New Jersey,

Defendants.

This matter being opened to the Court by Meyner, Landis & Verdon, attorneys for the United States Trust Company of New York (Trust Company); and the Court having considered the Affidavits of J. Sinclair Armstrong and Edwin C. Landis, Jr.; and it appearing to the Court that the Trust Company, Trustee for the 40th and 41st Series of Consolidated Bonds of the Port Authority of New York and New Jersey (Port Authority), is also the holder of a signficant amount of all Series of Consolidated Bonds of the Port Authority; and it further appearing to the Court that the Trust Company presents claims and defenses which are typical of the class of holders of Consolidated Bonds of the Port Authority and that the Trust Company and its counsel are fully competent to fairly and adequately protect the

interests of the class; and the Court having reviewed the provisions of R. 4:32-3(b) and other due process considerations; and the Court having noted the widespread publicity given to this action and the absence of intervening bondholders; and it appearing that all parties have consented to this order, it is

ORDERED that this action shall be maintained and defended as a class action under Rule 4:32-1(b)(1) and (b)(2) by the Trust Company as representative on behalf of a class consisting of all holders of all Series of Consolidated Bonds of the Port Authority; and it is

FURTHER ORDERED that notice of this class action be deemed to have been given to members of the class of bondholders via the media publicity given to this class action.

GEORGE B. GELMAN,
J.S.C.

Dated: October 24, 1974

The within Order is hereby consented to as to form and substance.

MEYNER, LANDIS & VERDON
Gateway I—Suite 2500
Newark, New Jersey 07102

By: ROBERT B. MEYNER

CARTER, LEDYARD & MILBURN
Two Wall Street
New York, New York 10005

By: DEVEREUX MILBURN
Attorneys for plaintiff,
U. S. Trust Company

WILLIAM F. HYLAND
Attorney General of the
State of New Jersey

By: MICHAEL L. SOVERN

By: MURRAY J. LAULICHT

By: HAROLD EDGAR

Attorneys for defendants,
State of New Jersey,
Brendan T. Byrne, and
William F. Hyland

Affidavit of Edwin C. Landis, Jr.
Sworn to October 23, 1974

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

[TITLE OMITTED IN PRINTING]

STATE OF NEW JERSEY
COUNTY OF ESSEX } ss.:

EDWIN C. LANDIS, JR., of full age, being duly sworn according to law, upon his oath, deposes and says:

1. Many newspaper and other periodical reports and comments regarding this lawsuit have been published since the complaint was filed on April 30, 1974. I have assembled those listed below and attach them as indicated.

a. "For Mass Transit"—New York Post, New York City, New York, April 30, 1974

b-1. "Bondholders Counter Byrne Transit Bid"—Post, Paramus, New Jersey, May 1, 1974

b-2. "Byrne signs bill lifting PA bonding restriction"—The Record, Hackensack, New Jersey, May 1, 1974

b-3. "Byrne signs PA transit-$ pact in Jersey; NYC bank files suit to block move"—Long Island Press, Jamaica, New York City, New York, May 1, 1974

b-4. "Byrne signs Port legislation"—The News Tribune, Woodbridge, New Jersey, May 1, 1974

b-5. "Byrne Signs Transit Legislation"—Paterson News, Paterson, New Jersey, May 1, 1974

b-6. "Covenant repealer now law"—The Herald-News, Passaic, New Jersey, May 1, 1974

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b-7. "Jersey Sued Over Agreement"—Paterson News, Paterson, New Jersey, May 1, 1974

b-8. "Law Dismays Municipal-Bond Dealers"—New York Times, New York City, New York, May 1, 1974

b-9. "New York Bank challenges P.A. move"—The Star Ledger, Newark, New Jersey, May 1, 1974

b-10. "N.Y. transit action awaited by Byrne"—Burlington County Times, Willingboro, New Jersey, May 1, 1974

b-11. "PA Mass Transit Bill Becomes Law"—The Daily Register, Red Bank—Middletown, New Jersey, May 1, 1974

b-12. "Port Panel Backs Move On Transit"—New York Times, New York City, New York, May 1, 1974

b-13. "Suit attacks Port Authority legislation"—The Jersey Journal, Jersey City, New Jersey, May 1, 1974

b-14. "Suit Is Filed Over Use Of Port AuthorityFunds"—The Wall Street Journal, New York City, New York, May 1, 1974

b-15. "US Trust Seeks to Void NJ Threat to Bonds"—American Banker, New York City, New York, May 1, 1974

c-1. "Albany Votes Bill to Free Port Unit for Mass Transit"—New York Times, New York City, New York, May 2, 1974

c-2. "Clearing the Tracks"—Asbury Park Evening Press, Asbury Park, New Jersey, May 2, 1974

c-3. "Hunterdon Legislators Support PA Repealer"—Hunderdon County Democrat, Flemington, New Jersey, May 2, 1974

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c-4. "The Predicted Consequences"—Daily News, New York City, New York, May 2, 1974

c-5. "The state welshes"—The Herald-News, Passaic, New Jersey, May 2, 1974

c-6. "Wilson Gets Bill to Have PA Pay for Mass Transit"—Daily News, New York City, New York May 2, 1974

d. "Transit turnabout"—The Citizen Register, Ossining, New York, May 3, 1974

e. "Port Authority's Future: Will It Be In Mass Transit?"—New York Times, New York City, New York, May 5, 1974

f-1. "Dishonest, too"—The Herald-News, Passaic, New Jersey, May 6, 1974

f-2. "PA on the Right Track"—The Dispatch, Union City, New Jersey, May 6, 1974

f-3. "Word and Bond"—Barron's National Business and Financial Weekly, New York City, New York, May 6, 1974

g-1. "Set Pretrial Session In PA Transit"—The Dispatch, Union City, New Jersey, May 7, 1974

g-2. "Suit Aims to Kill PATH Law"—Paterson News, Paterson, New Jersey, May 7, 1974

h. "PATH Hearing In July"—Paterson News, Paterson, New Jersey, May 8, 1974

i. "The Editor's Corner"—The Daily Bond Buyer, New York City, New York, May 13, 1974

j. "Keeping Faith With Investors"—The Journal of Commerce, New York City, New York, May 15, 1974

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k. "Municipal Forum Fights Repeal of PA Covenant"—American Banker, New York City, New York, May 8, 1974

l. "Wilson Is Urged To Sign Repeal of PA Bond Covenant"—The Daily Bond Buyer, New York City, New York, May 29, 1974

m. "Club opposes auto tax . . . and joins N. J. AAA in toll rate protest"—New York Motorist, New York City, New York, May 1974

n. "Freeing the P.A."—New York Times, New York City, New York, June 1, 1974

o. "P.A. rule hinges on Wilson"—Sunday Star Ledger, Newark, New Jersey, June 2, 1974

p. "GREEN LIGHT: Wilson signs bill putting P.A. on mass transit track"—Sunday Star Ledger, Newark, New Jersey, June 16, 1974

q-1. "Bank's N.Y. Suit Would Bar P.A. Aid for Mass Transit"—Paterson News, Paterson, New Jersey, June 17, 1974

q-2. "Looks Like Big Wait for Transit Aid From PA"—Daily News, New York City, New York, June 17, 1974

q-3. "N.Y. bank is filing suit as Wilson frees PA funds"—The Record, Hackensack, New Jersey, June 17, 1974

q-4. "New York Governor Signs Port Authority Mass-Transit Measure"—The Wall Street Journal, New York City, New York, June 17, 1974

q-5. "Plans Suit to Upset Transit Role by PA"—The Dispatch, Union City, New Jersey, June 17, 1974

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q-6. "PA TRANSIT LAW FACES 2d SUIT, Big Bondholders to Sue On PA Transit Action"—Daily News, New York City, New York, June 17, 1974

q-7. "Sue To Halt PA Shift"—The Daily Journal, Elizabeth, New Jersey, June 17, 1974

q-8. "Wilson, Dubious of Effect, Signs Port-Bond Measure"—New York Times, New York City, New York, June 17, 1974

r-1. "VIEWPOINT—Grudging Approval"—The Star Ledger, Newark, New Jersey, June 18, 1974

r-2. "PA Mulls Assistance For Transit"—The Dispatch, Union City, New Jersey, June 18, 1974

r-3. "Suit filed to keep P.A out of transit"—Staten Island Advance, Staten Island, New York, June 18, 1974

r-4. "U.S. Trust Files Suit Over Port Authority's Mass-Transit Funding"—The Wall Street Journal, New York City, New York, June 18, 1974

r-5. "U.S. Trust Sues to Void N.Y. Repeal of PA Covenant; Wilson Concedes Law Overturns State's Pledge"—The Daily Bond Buyer, New York City, New York, June 18, 1974

s. "Closer and closer"—The News Tribune, Woodbridge, New Jersey, June 19, 1974

t-1. "Hearing scheduled for P.A. July 25 on mass transit"—The Jersey Journal, Jersey City, New Jersey, June 20, 1974

t-2. "Opposing Sides on PA Covenant Will Debate July 25 in N.J. Court"—The Daily Bond Buyer, New York City, New York, June 20, 1974

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u. "Suits to test PA transit covenant"—The Herald-News, Passaic, New Jersey, June 26, 1974

v. "N.J. Judge Revises Dates For Arguments and Briefs on 2 PA Covenant Suits"—The Daily Bond Buyer, New York City, New York, June 28, 1974

w. "Columbia dean to argue P.A. bond suit"—Sunday Star Ledger, Newark, New Jersey, June 30, 1974

x. "Hyland Calls for Help"—The Dispatch, Union City, New Jersey, July 1, 1974

y-1. "N.J. answers suit, defends repeal of PA bond covenant"—The Herald-News, Passaic, New Jersey, July 16, 1974

y-2. "PA covenant repeal defended"—The Daily Register, Shrewsbury, New Jersey, July 16, 1974

y-3. "PA Says Bond Move Legitimate"—Asbury Park Evening Press, Asbury Park, New Jersey, July 16, 1974

y-4. "State answers suit on P.A. pact repealer"—Star Ledger, Newark, New Jersey, July 16, 1974

y-5. "State Argues For Repeal Of PA Ban"—Paterson News, Paterson, New Jersey, July 16, 1974

z. "PA contradicts commitment to mass transit"—The Record, Hackensack, New Jersey, July 17, 1974

aa. "Pesin to Byrne: Act on P.A. in transit"—The Jersey Journal, Jersey City, New Jersey, July 18, 1974

bb. "Standard operating procedure"—The Sunday Record, Hackensack, New Jersey, July 21, 1974

cc. "Port Authority Defends Legal Fees for Trustee"—The Daily Bond Buyer, New York City, New York, July 22, 1974

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2. The ABC circulation figure cited for each following newspaper is the figure from the Audit Bureau Circulation Report of September 30, 1973.

3. The Asbury Park Evening Press is a newspaper published daily in Asbury Park, New Jersey, and has an ABC circulation list of 89,764 Monday through Saturday and 110,173 for Sunday. It is distributed throughout Monmouth and Ocean Counties.

4. Barron's National Business and Financial Weekly is a newspaper published weekly in New York City, New York, and has an ABC circulation list of 221,321. It is distributed nationally.

5. The Burlington County Times is a local newspaper published daily in Willingboro, New Jersey, and has an ABC circulation list of 37,132 Monday through Saturday and 24,807 for Sunday.

6. The Citizen Register is a local newspaper published Monday through Saturday in Ossining, New York, and has an ABC circulation list of 9,068. It is distributed only in Ossining and several small surrounding towns.

7. The Daily Bond Buyer is a newspaper published Monday through Friday, in New York City, New York. It is distributed nationally throughout the community of purchasers and sellers of bonds.

8. The Daily Journal is a newspaper published Monday through Saturday in Elizabeth, New Jersey, and has an ABC circulation list of 66,063 Monday through Friday and 60,540 for Saturday. It is distributed throughout three New Jersey counties: Essex, Middlesex, and Union.

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9. The Daily News is a newspaper published daily in New York City, New York, and has an ABC circulation list of 2,120,549 Monday through Saturday and 2,933,182 for Sunday. It is circulated throughout the Northeast region of the United States.

10. The Daily Register is a newspaper published Monday through Friday in Shrewsbury, New Jersey, and has an ABC circulation list of 31,202. It is distributed throughout northern Monmouth County.

11. The Hudson Dispatch is a local newspaper published Monday through Saturday in Union City, New Jersey, and has an ABC circulation list of 53,576.

12. The Herald-News is a newspaper published Monday through Saturday in Passaic, New Jersey, and has an ABC circulation list of 93,372 Monday through Friday and 93,338 for Saturday. It is distributed throughout the entire northern New Jersey area.

13. The Hunterdon County Democrat is a newspaper published weekly in Flemington, New Jersey, and has an ABC circulation list of 19,160.

14. The Jersey Journal is a newspaper published Monday through Saturday in Jersey City, New Jersey, and has an ABC circulation list of 86,368 Monday through Friday and 81,382 for Saturday. It is distributed throughout Hudson County, New Jersey.

15. The Journal of Commerce is a financial newspaper published Monday through Friday in New York City, New York, and has an ABC circulation list of 23,296. It is distributed nationally.

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16. The Long Island Press is a newspaper published daily in Jamaica, New York City, New York, and has an ABC circulation list of 355,046 Monday through Saturday and 335,127 for Sunday. It is distributed throughout the Long Island area.

17. The New York Motorist is a newspaper published by the Automobile Club of New York in New York City, New York. It is published monthly and distributed throughout the more than 416,500 members of the AAA club of New York for the fourteen southern-most counties.

18. The New York Post is a newspaper published daily excluding Sunday and has an ABC circulation list of 626,713 Monday through Friday and 375,607 for Saturday. It is distributed nationally.

19. The New York Times is a newspaper published daily in New York City, New York, and has an ABC circulation list of 4,505,949. It has wide national and international distribution.

20. The News Tribune is a newspaper published Monday through Saturday in Woodbridge, New Jersey, and has an ABC circulation list of 54,153. It is distributed throughout Middlesex and Monmouth Counties.

21. The Paterson News is a local newspaper published Monday through Saturday in Paterson, New Jersey. It has an ABC circulation list of 29,581 Monday through Friday daily, 44,638 Monday through Friday evening, and 69,627 for Saturday. It is distributed in the Paterson area of Passaic County.

22. The Post is a local newspaper published on Sunday and Wednesday in Paramus, New Jersey, and has an ABC

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circulation list of 9,572 for Sunday and 28,009 for Wednesday. It is distributed throughout North Bergen County.

23. The Record is a newspaper published daily, excluding Saturday, in Hackensack, New Jersey, and has an ABC circulation list of 152,140 Monday through Friday and 181,995 for Sunday. It is distributed mainly throughout Bergen County, with some distribution in Passaic County, New Jersey, and Rockland County, New York.

24. The Star-Ledger is a newspaper published daily in Newark, New Jersey, and has an ABC circulation list of 356,306 Monday through Friday, 335,839 for Saturday, and 560,261 for Sunday. It is circulated throughout the entire New Jersey area.

25. The Staten Island Advance is a newspaper published daily in Staten Island, New York, and has an ABC circulation list of 68,690 Monday through Friday, 64,440 for Saturday, and 69,086 for Sunday. It is distributed principally in Staten Island.

26. The Wall Street Journal is a financial newspaper. Four editions of this newspaper are published daily, excluding Saturday and Sunday. The Eastern edition is published in White Oak, Maryland; South Brunswick, New Jersey, and Chicopee Falls, Massachusetts; and has an ABC circulation list of 515,824. The Midwest edition is published in Chicago and Hyland, Illinois, and Cleveland, Ohio, and has an ABC circulation list of 390,711. The Pacific Coast edition is published in Riverside and Palo Alto, California, and has an ABC circulation list of 223,417. The Southwest edition is published in Dallas, Texas, and has an ABC circulation list of 121,592. The articles noted above as appearing in the Wall Street Journal in fact

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appeared in each of the four editions except the June 18th article which did not appear in the Midwest edition.

27. I am advised by the Port Authority of New York and New Jersey that of the approximately $1,600 million in outstanding Consolidated Bonds of all series, approximately $76 million are held in registered form. I am further advised that the balance of approximately $1,524 million are held in bearer form by owners unknown to the Port Authority or its paying agents. I am further advised that the list of owners of registered bonds contains approximately 2800 names, some of which are duplications.

EDWIN C. LANDIS, JR.

(Sworn to October 23, 1974.)

[Jurat and attachments omitted in printing.]

Affidavit of J. Sinclair Armstrong
Sworn to October 24, 1974

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION—BERGEN COUNTY

[Title omitted in printing]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

J. SINCLAIR ARMSTRONG, being duly sworn, deposes and says:

1. I am an Executive Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation (the "Trust Company"), with its principal office at 45 Wall Street, New York, New York. I am fully familiar with the matters set forth in this affidavit.

2. The Trust Company instituted this action as the Trustee for The Port Authority Consolidated Bonds, Fortieth and Forty-First Series, pursuant to Section 8 of the Resolution Establishing the Fortieth Series of Consolidated Bonds, due 2008 adopted May 10, 1973 and the Resolution Establishing the Forty-First Series of Consolidated Bonds, due 2008 adopted September 13, 1973.

3. Pursuant to such Section 8 of the respective Resolutions adopted by The Port Authority the Trust Company is "authorized to act in its discretion to assure that all of the rights of and obligations to the holders of bonds of [such] Series are unconditionally recognized, protected and fulfilled." Such Resolutions also permit the Trust Company "to institute any action on behalf of the holders of bonds of [such] Series against [The Port Authority] or others which it shall in its sole discretion deem advisable . . ."

4. The Trust Company also brings this action on its own behalf as the holder (in its own account, as custodian and in its several fiduciary capacities) of approximately $96,780,000 principal amount (as of July 13, 1974) of the Consolidated Bonds of The Port Authority and on behalf of all of the holders of Consolidated Bonds of The Port Authority who have an undivided interest in the revenues of The Port Authority and the reserve funds securing such Consolidated Bonds.

5. As of July 13, 1974, approximately $1,600,000,000 principal amount of Consolidated Bonds of The Port Authority were outstanding and held by banks, trust companies, other financial institutions, pension funds and private individuals.

6. As of July 13, 1974 the Trust Company held (in its own account, as custodian and in its several fiduciary capacities) the following Consolidated Bonds issued by The Port Authority of New York and New Jersey in the following amounts:

Name of Bond Issue	Principal Amount
First Series Consolidated Bonds	$ 1,120,000
Second Series Consolidated Bonds	778,000
Fourth Series Consolidated Bonds	1,498,000
Fifth Series Consolidated Bonds	811,000
Sixth Series Consolidated Bonds	1,848,000
Seventh Series Consolidated Bonds	1,011,000
Eighth Series Consolidated Bonds	1,912,000
Ninth Series Consolidated Bonds	55,000
Tenth Series Consolidated Bonds	1,545,000
Eleventh Series Consolidated Bonds	896,000
Twelfth Series Consolidated Bonds	15,000
Thirteenth Series Consolidated Bonds	390,000

Name of Bond Issue	Principal Amount
Fourteenth Series Consolidated Bonds	$1,045,000
Fifteenth Series Consolidated Bonds	199,000
Sixteenth Series Consolidated Bonds	680,000
Seventeenth Series Consolidated Bonds	195,000
Eighteenth Series Consolidated Bonds	600,000
Nineteenth Series Consolidated Bonds	860,000
Twentieth Series Consolidated Bonds	1,071,000
Twenty-First Series Consolidated Bonds	933,000
Twenty-Second Series Consolidated Bonds	531,000
Twenty-Third Series Consolidated Bonds	1,231,000
Twenty-Fourth Series Consolidated Bonds	1,067,000
Twenty-Fifth Series Consolidated Bonds	682,000
Twenty-Sixth Series Consolidated Bonds	986,000
Twenty-Seventh Series Consolidated Bonds	925,000
Twenty-Eighth Series Consolidated Bonds	868,000
Twenty-Ninth Series Consolidated Bonds	242,000
Thirtieth Series Consolidated Bonds	1,201,000
Thirty-First Series Consolidated Bonds	5,005,000
Thirty-Second Series Consolidated Bonds	5,045,000
Thirty-Third Series Consolidated Bonds	6,150,000
Thirty-Fourth Series Consolidated Bonds	5,175,000
Thirty-Fifth Series Consolidated Bonds	9,685,000
Thirty-Sixth Series Consolidated Bonds	3,500,000
Thirty-Seventh Series Consolidated Bonds	6,380,000
Thirty-Eighth Series Consolidated Bonds	10,405,000
Thirty-Ninth Series Consolidated Bonds	11,410,000
Fortieth Series Consolidated Bonds	3,710,000
Forty-First Series Consolidated Bonds	5,120,000

7. Under Section 2 of each of the Agreements of Trust between the Port Authority and the Trust Company, the Port Authority is obligated to pay to the Trust Company

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Sworn to October 24, 1974

"reasonable compensation for extraordinary services and reimbursement for such reasonable expenses, charges, counsel fees and other disbursements previously incurred by the Trustee for which provision is made for payment in Section 8 of the Resolution and for which payment has not been made by the Authority". Section 8 of the Resolutions establishing Series 40 and Series 41 provides that, among other things, the Port Authority shall pay to the Trustee from time to time reasonable compensation for all services rendered and shall also pay to the Trustee all of its reasonable expenses, charges, counsel fees and other disbursements incurred in the performance of its powers and duties under the Resolution. One of the duties of the Trustee under the Resolution is to institute lawsuits on behalf of bondholders if it deems such lawsuits advisable in order to protect their interests.

Section 6-7 of the Model Debenture Indenture promulgated by the American Bar Foundation similarly provides for the payment to a trustee by an obligor of reasonable compensation for services rendered and the reimbursement of a trustee by an obligor for all reasonable expenses, including the compensation and expenses of its counsel. Accordingly, the payment of compensation to the Trust Company and the reimbursement of its expenses, including counsel fees, by the Port Authority in connection with the prosecution of the above-captioned lawsuit is in consonance with the usual and customary arrangement and practice between an obligor and trustee under a trust agreement. The Trust Company has initiated, prosecuted and will continue to prosecute this lawsuit independently of the Port Authority.

J. SINCLAIR ARMSTRONG

(Sworn to October 24, 1974.)

[Jurat omitted in printing.]

Decision of the Superior Court of New Jersey, Law Division, Bergen County

UNITED STATES TRUST COMPANY OF NEW YORK, ETC., PLAINTIFF, v. THE STATE OF NEW JERSEY, *ET AL.*, DEFENDANTS .

DANIEL M. GABY, PLAINTIFF, v. THE PORT OF NEW YORK AUTHORITY, *ET AL.*, DEFENDANTS.

Superior Court of New Jersey
Law Division

Argued April 8, 9, 1975—Decided May 14, 1975.

SYNOPSIS

Consolidated actions were brought concerning constitutional validity of legislation creating, and later repealing, a covenant between the States of New Jersey and New York and holders of bonds issued by the Port Authority of New York and New Jersey. Defendants filed counterclaim for declaration of validity of repealing legislation. The Superior Court, Law Division, Gelman, J. S. C., held that legislative enactments, such as the 1962 covenant whereby the States and Authority were precluded from applying Authority revenues and reserves for passenger railroad purposes unless permitted by criteria set forth in the covenant, can constitute a contract within meaning of the contract clauses of the State and Federal Constitutions, that not every impairment of a contract obligation or security for its performance runs afoul of the contract clause, that a State's inherent power to protect the public welfare may be validly exercised under the contract clause even if it impairs a contractual obligation so long as it does not destroy it, and that in view of emergent problems of air pollution, crises in mass transit and energy problems repeal legislation was a reasonable and valid exercise of the State's police power and was not prohibited by the contract clause of either the Federal or State Constitution.

Complaints dismissed; judgment for defendants on counterclaim.

Mr. Robert B. Meyner and Mr. Devereux Milburn (of the New York Bar) for plaintiff United States Trust Company (*Messrs. Meyner, Landis & Verdon,* attorneys; and *Messrs. Carter, Ledyard & Milburn,* attorneys; and *Mr. Donald J. Robinson* (of the New York Bar) *Messrs. Hawkins, Delafield & Wood,* attorneys).

Mr. Michael I. Sovern (of the New York Bar) and *Mr. Murray J. Laulicht,* special counsel for defendants (*Mr. William F. Hyland,* Attorney General of New Jersey, attorney; *Mr. Harold S. H. Edgar* (of the New York Bar) on the brief).

Mr. Theodore W. Kheel (of the New York Bar) and *Mr. Howard Stern* for plaintiff Daniel M. Gaby (*Messrs. Battle, Fowler, Stokes & Kheel,* attorneys, and *Messrs. Shavick, Stern, Schotz, Steiger & Croland,* attorneys).

Mr. Joseph Lesser (of the New York Bar) for defendant Port Authority of New York and New Jersey (*Mr. Francis A. Mulhern,* attorney); and *Mr. Patrick J. Falvey* (of the New York Bar), *Ms. Isobel E. Muirhead, Mr. Arthur P. Berg* (of the New York Bar), (*Mr. Vigdor D. Bernstein,* of counsel).

GELMAN, J. S. C. These are consolidated actions which have as their common subject matter the constitutional validity of legislation of this State creating, and later repealing, a covenant between the States of New Jersey and New York and the holders of bonds issued by the Port Authority of New York and New Jersey (Port Authority).[1] The

[1]Under the terms of the Compact of 1921 creating the Port Authority, *N. J. S. A.* 32:1-1 *et seq.*, legislative action taken by one state

first legislative act in question, *chapter* 8 of the *Laws of* 1962, *N. J. S. A.* 32:1–35.50 (the 1962 covenant), authorized the Port Authority to construct the World Trade Center and to acquire and operate the Hudson & Manhattan Railroad Company. As part of the 1962 legislation the two States enacted a statutory covenant with each other and with the holders of certain Port Authority bonds whereby the States and the Port Authority were precluded from applying the Authority's revenues and reserves for passenger railroad purposes unless permitted by the criteria set forth in the statute. *N. J. S. A.* 32:1–35.55.

The 1962 covenant was repealed by chapter 25 of the *Laws of* 1974.[2] The complaint filed by the United States Trust Company challenges the constitutionality of the repeal act of 1974, and the Gaby complaint attacks the validity of the 1962 covenant. We turn, then, to the procedural history of these actions and the issues projected by the respective pleadings.

Procedural History

1. *The Gaby Action*

On May 16, 1972 plaintiff Daniel Gaby filed a class action complaint for a declaratory judgment that the 1962 covenant violated the Federal and State Constitutions. The complaint named as defendants the Port Authority, its commissioners and executive director, and the then Governor of New Jersey, William T. Cahill. On October 25, 1972, on

affecting the powers and duties of the Port Authority is not effective until concurred in by the legislature of the other. *N. J. S. A.* 32:1–8. Statutory citations in this opinion will be limited to the applicable New Jersey statutes unless the context otherwise requires.

[2]In 1972 the Legislature had repealed the 1962 covenant as to all bonds of the Authority issued after the effective date of the act. *L.* 1972, *c.* 208; *N. J. S. A.* 32:1–35.55a. The act became effective upon the adoption of concurrent legislation by the State of New York on May 10, 1973. *Laws of N. Y.* 1973, *c.* 318. The validity of this legislation is not in issue in these proceedings.

the motion of the Attorney General of New Jersey, the complaint was dismissed as to former Governor Cahill. The Attorney General also moved to dismiss the complaint for failure to name as an indispensable party the Port Authority's bondholders. No disposition appears to have been made of the motion at that time.

The Gaby complaint alleges, among other things, that the residents of the State of New Jersey are dependent upon mass transit facilities and are adversely affected by the deterioration of such facilities within the District serviced by the Port Authority (the Port District). It is alleged that the Port Authority was created by the Compact of 1921 and consented to by the United States Congress[3] to assure "cooperation of the two states in the future development" of transportation facilities within the Port District, and that by virtue of the 1962 covenant, restricting the Port Authority's power to acquire or operate passenger rail transit facilities, the two states entered into a new "Compact" without the consent of Congress and in violation of *U. S. Const.*, Art. 1, § 10. The complaint further alleges that the 1962 covenant constitutes an unconstitutional surrender by the State of its sovereign powers "to protect the health, general welfare and safety of the people," and that it has impaired and obstructed existing facilities for the transportation of goods in interstate commerce, in violation of *U. S. Const.*, Art. 1, § 8.

Gaby asks for multifarious relief. Aside from seeking a declaration as to the unconstitutionality of the 1962 covenant, he asks the court to declare the covenant to be subject to repeal, and to direct the Port Authority to formulate and submit to the court a plan for the development of mass transit facilities within the Port District.

The Gaby action was pretried on February 22, 1973, at which time it was stipulated that the action could proceed

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[3] *Pub. Res. No.* 17, 67th Cong., 1st Sess. (42 *Stat.* 174).

as a class action without formal notice to the class represented by plaintiff. Thereafter both sides moved for summary judgment, and oral argument on the motions was heard on September 26, 1973. At the conclusion of the argument the court directed the parties to submit further briefs on the constitutional issues and on the question whether the bondholders were necessary parties to the Gaby action. Following conferences between counsel and the court, it was agreed the United States Trust Company should be permitted to intervene in the Gaby action as a party defendant to represent the interests of the bondholders in that action. An order to such effect was entered on December 18, 1973, and arguments were rescheduled on the motions for summary judgment.

Prior to the date fixed for the argument the prospects for the adoption of the repeal act became apparent, and further action in the Gaby case was stayed pending future legislative developments.

2. *The United States Trust Company Action*

The New Jersey Legislature completed action on the repeal act on April 22, 1974, and Governor Brendan T. Byrne signed the bill into law on April 30, 1974. On the same day United States Trust Company (U. S. Trust) filed its complaint on behalf of itself as the holder of Port Authority bonds, as trustee for certain designated issues of Port Authority bonds, and on behalf of all holders of consolidated bonds issued by the Port Authority. The complaint names as defendants the State of New Jersey, Governor Byrne and the Attorney General of New Jersey, and seeks a declaratory judgment that the repeal act violated the Federal and State Constitutions.

U. S. Trust alleges that it is the holder (for its own account and in a fiduciary capacity) of $96,000,000 of consolidated bonds issued by the Port Authority; that the Port Authority was intended, under the terms of the Compact approved by Congress, to be a self-supporting public

agency whose obligations were to be and are payable from its net revenues and certain reserve funds; that the 1962 covenant was enacted to protect the Port Authority's existing and future bondholders from the diversion of pledged revenues and reserves to finance deficit mass transit facilities and further to preserve the Port Authority's credit standing; that the Port Authority notified prospective purchasers of its bonds of the existence of the 1962 covenant and purchasers relied on the covenant in purchasing bonds issued by the Port Authority, and that the secondary market for the Port Authority consolidated bonds has been adversely affected by the repeal act.

The complaint alleges that the repeal act violates the "impairment" and "taking" provisions of the Federal Constitution, *U. S. Const.*, Art. I, § 10 and Amends. V and XIV, and the equivalent provisions of the New Jersey Constitution, *N. J. Const.* (1947), Art. IV, § VII, par. 3; Art. I, pars. 1 and 20.

The answer filed by defendants asserts several defenses among which the following may be briefly noted: (1) the repeal act constitutes a reasonable exercise of the police power by the State; (2) the 1962 covenant itself violated the Federal Constitution because of lack of congressional consent; (3) the repeal act does not constitute an "impairment" of the contract since the obligation of the Port Authority to pay its bondholders remains intact; (4) the bondholders were on notice of the reserved powers of the State to repeal the 1962 covenant, and (5) the repeal act was adopted as a police power measure to meet a transportation crisis affecting the health, safety and welfare of persons residing within the District. Finally, the answer asserts a counterclaim for a declaratory judgment that the repeal act is constitutional.

A consent order was entered pursuant to *R.* 4:32-1 in the U. S. Trust action directing that the action be maintained and defended as a class action by U. S. Trust on

behalf of all holders of consolidated bonds of the Port Authority, and that notice to the class be deemed to have been given by means of the media publicity which was disseminated when the action was instituted. On December 10, 1974 the Gaby and U. S. Trust actions were consolidated by order of the court.

The parties to the U. S. Trust action have filed a 366-page stipulation of facts, accompanied by exhibits covering all phases of the case with the exception of two issues: (1) whether the purchasers of consolidated bonds issued by the Port Authority after the adoption of the 1962 covenant relied in fact upon the existence of the covenant, and (2) whether the repeal of the 1962 covenant adversely affected the secondary market for Port Authority bonds. These issues were the subject of a trial on February 4, 5, 6, 7 and 11, 1975, and the court's findings on the issues will be set forth *infra*.

The Formation, Facilities and Financial Structure of the Port Authority.

1. *Formation and Facilities.*

In 1917 the States of New Jersey and New York established the New York, New Jersey Port and Harbor Development Commission (the Commission) to study the facilities and problems of the Port of New York and to recommend a plan for the future development of the Port.[4] The Commission filed its *Report*[5] on December 16, 1920

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[4]The enabling legislation directed the commissioners to negotiate and agree upon a joint report recommending a policy for the states "to the end that said port shall be efficiently and constructively organized and furnished with modern methods of piers, rail and water and freight facilities * * *." The Commission was to work out "a comprehensive and adequate interstate and Federal port policy, to meet commercial needs in times of peace and the protection of the harbor and adjacent localities in times of war." *L.* 1917, *c.* 130.

[5]*Joint Report with Comprehensive Plan and Recommendations*, New York, New Jersey Port and Harbor Development Commission, 1920 (hereafter cited as the *Report*).

setting forth its findings, conclusions and recommendations. The core recommendation of the Commission was the creation by the two states of a common public agency by means of which the states would cooperate in the future development of the facilities of the Port in accordance with the comprehensive plan recommended by the Commission.[6] *Report* at 436. In discussing the legal precedents for the establishment by the States of an agency having a substantial impact on interstate commerce, the *report* stated:

> Permissive or restrictive, as the case may be, the power of Congress over the instrumentalities of interstate traffic is exclusive, when in a specific case it has been exercised. But this latter limitation, coupled with the broad police power of the State and its control of intrastate commerce, has left to New York and New Jersey a broad field within which they may act without express Federal consent. It is hoped, of course, by securing congressional approval of any plan which may be adopted, to avoid future conflict with the Federal authority over interstate unification and control of the Port. But for the present the States may act alone. [*Report* at 446]

Prophetically the Commission noted that

> [o]ur port problem is primarily a railroad problem. * * * Therefore the comprehensive plan to evolve which this Commission was created is essentially a railroad plan. With the proper network of rail facilities, the development of other terminal facilities can follow along rational lines * * *. A complete reorganization of the railroad system is the most fundamental physical need of the Port of New York. [*Report* at 3]

However, the railroad problem upon which the Commission focused was not that of passenger transit but the handling and distribution of freight and cargo into and out of the Port District, and the comprehensive plan recommended by the Commission addressed itself exclusively to the transportation and distribution, not of persons but of freight

[6]The recommendation for a Compact between the States was originally contained in the Commission's preliminary report submitted in 1918.

and cargo by rail, and to a lesser extent by ship and motor truck. In its 474 pages plus appendices the only significant discussion of passenger traffic in the *Report* is contained in the section dealing with ferries and vehicular tunnels. After noting that the bulk of interstate passenger traffic was accommodated by the Hudson River ferries and that the impact of the Holland Tunnel (started in 1920) could not be forecast, the *Report* opined:

> Vehicular tunnels offer little promise as a means of conveying passengers, and the one rapid-transit facility in existence between the two States, while operated to near capacity, is not sufficiently profitable to warrant optimism that others will be built. [*Report* at 330]

Following the submission of the Commission's *Report*, the Port of New York Authority[7] was created pursuant to an interstate compact, signed April 30, 1921, between the States of New Jersey and New York. *N. J. S. A.* 32:1–1 *et seq.* The consent of Congress "to each and every part and article" of the Port Authority Compact was obtained effective August 23, 1921. *Pub. Res. No.* 17, 67th Cong. 1st Sess. The preamble of the Port Authority Compact states that "a better coordination of the terminal, transportation and other facilities of commerce in, about and through the port of New York, will result in great economies, benefiting the nation, as well as the states of New York and New Jersey," and that "the future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums of money, and the cordial co-operation of the States of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans."

Article I of the Compact contains the agreement and pledge by the two states of their "faithful co-operation in

[7]The name of the Port of New York Authority was changed to the Port Authority of New York and New Jersey on July 1, 1972. *N. J. S. A.* 32:1–4.

the future planning and development of the port of New York, holding in high trust for the benefit of the nation the special blessings and natural advantages thereof". Article II defines the Port of New York District, comprising an area of about 1500 square miles in both states within a radius of about 25 miles from the Statue of Liberty. Article III establishes the Port Authority as "a body corporate and politic, having the powers and jurisdiction hereinafter enumerated, and such other and additional powers as shall be conferred upon it by the legislature of either state concurred in by the legislature of the other, or by act or acts of congress." Article VI vests in the Port Authority "full power and authority to purchase, construct, lease and/or operate any terminal or transportation facility within [the Port] district"; to make charges for the use of such facilities, and "to borrow money and secure the same by bonds or by mortgages upon any property" held by the Port Authority. Article VII provides that the Port Authority "shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the legislature of either state concurred in by the legislature of the other," and mandates that the Port Authority shall not pledge the credit of either State except with the consent of its legislature. Article XI requires the Port Authority to make plans for the development of the Port District supplementary to or amendatory of any plan theretofore adopted, and Article XII authorizes the Port Authority to "make recommendations to the legislatures of the two states or to the congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the port of New York."

Article XXII of the Compact defines "transportation facility" to include "railroads, steam or electric * * * and every kind of transportation facility now in use or hereafter designed for use for the transportation or carriage of persons or property", and defines "railroad" as "includ[ing] railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, power houses, substations, lines for the transmission of power, car barns, shops, yards, sidings, turnouts, switches, stations and approaches thereto, cars and motive equipment."

In 1922 the states, with the consent of Congress, adopted a Comprehensive Plan for the development of the Port of New York. *N. J. S. A.* 32:1–25 *et seq.; Pub. Res. No.* 66, 67th Cong., 2d Sess. The Comprehensive Plan sets forth the development program initially envisioned by the Commission for implementation by the Port Authority.

In the Plan, like the *Report* upon which it was based, unification of terminal operations and facilities, consolidation of shipments, adaptation and coordination of existing facilities, improvement of commercial rail, truck and water facilities and other freight handling improvements are set forth as principles to govern the development of the Port Authority. The Comprehensive Plan proposed to establish direct rail freight connections between New Jersey and Manhattan to furnish "the most expeditious, economical and practical transportation of freight especially meat, produce, milk and other commodities comprising the daily needs of the people." *N. J. S. A.* 32:1–29. Section 8 of the 1922 Comprehensive Plan statute denies to the Authority the power to levy taxes or assessments, and provides that the bonds or other securities issued by the Port Authority shall at all times be free from taxation by either state. *N. J. S. A.* 32:1–33. Finally, it should be noted that the power was reserved to the states to add to, modify or change any part of the Plan. *N. J. S. A.* 32:1–26.

Pursuant to the Compact, the Comprehensive Plan and subsequent amendments and supplements thereto, the Port Authority operates all of the interstate vehicular tunnels and bridges in the Port District, which include the Holland

Tunnel[8], the Lincoln Tunnel, the George Washington Bridge, the Bayonne Bridge and the Arthur Kill Bridges. In addition, the Port Authority owns and/or operates the following facilities: Newark International Airport, Teterboro Airport, LaGuardia Airport, John F. Kennedy International Airport and two heliports; Port Newark, the Hoboken Port Authority Marine Terminal, the Elizabeth Port Authority Marine Terminal, the Columbia Street Marine Terminal, the Erie Basin Port Authority Marine Terminal and a Mid-Manhattan Consolidated Passenger Ship Terminal; the Port Authority Bus Terminal, the George Washington Bridge Bus Station and the Newark and New York Union Motor Truck Terminals; the Port Authority Trans-Hudson system (operated for the Port Authority through its wholly-owned subsidiary, the Port Authority Trans-Husdon Corporation) and the World Trade Center.

Excluding the 1921 Compact and the 1922 Comprehensive Plan, the Legislatures of New Jersey and New York have adopted 39 separately enacted, concurrent statutes authorizing the construction and financing of the foregoing facilities, the issuance of bonds and notes by the Authority, the regulation of suits against it, and the establishment of a general reserve fund for the payment of the Authority's obligations. None of these 39 statutes received specific Congressional consent.

2. *The Financial Structure of the Port Authority*

Under the terms of the Compact the power to levy taxes or to pledge the credit of either state was expressly withheld from the Authority. From its inception, with the exception of monies advanced as loans by the states, the Authority was

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[8]The Holland Tunnel had been constructed by state commissions pursuant to a compact between the states which received the consent of Congress. In 1930 the Holland Tunnel was transferred to the Port Authority in order to enable it to honor its obligations to bondholders in the face of deficits incurred in connection with the Arthur Kill, George Washington and Bayonne Bridges. *L.* 1930, *c.* 247.

required to finance its facilities solely with money borrowed from the public and to be repaid out of the revenues derived from its operations. By reason of these financial limitations two concepts initially emerged which have played an important role in the realization of the purposes for which the Authority was created: first, the specific projects undertaken by the Authority should be self-supporting, *i. e.*, the revenues of each should be sufficient to cover its operating expenses and debt service requirements; and second, since the Authority is a public agency over which its creditors have no direct control, the bondholders should be protected by covenants with the Authority and with the states which have ultimate control over its operations.

The first facilities constructed by the Authority were vehicular spans linking Staten Island and New Jersey — the Arthur Kill Bridges — which were opened to traffic in 1928. A third Staten Island-New Jersey crossing, the Bayonne Bridge, was placed in operation in 1931. In that same year the George Washington Bridge was opened to traffic. With respect to each of these facilities the Port Authority was authorized to and did issue bonds in separate series to pay for the cost of acquisition of lands and construction. The revenues and tolls from each facility were statutorily pledged as security for the repayment of the series bonds issued in conjunction with the specific facility involved. *N. J. S. A.* 32:1–39, 62, 86. The States of New Jersey and New York advanced additional moneys to pay for the costs of construction, and the funds so advanced were accorded a subordinated status to the funds raised by the Authority from the sale of its own bonds to the public. *N. J. S. A.* 32:1–60, 63, 81, 87. The statutory authorizations for each project and its funding were declared to be "a contract or agreement between the two states for the benefit of those lending money to the port authority." *N. J. S. A.* 32:1–65, 89.

The first bonds issued to the public by the Authority were "closed-end" bonds based on the estimated costs of each facility, and the Authority was prohibited from issuing more

bonds than the amount initially authorized for the project. See *Goldberg, A History of the Port of New York Authority Financial Structure* (1964), at 3 (hereafter cited as *Goldberg*). The gross revenues from each bridge were applied first to the payment of expenses of operation and maintenance of the bridge, then to the payment of debt service on its bonds, and the surplus, if any, was to be deposited in a separate reserve fund available only to the bondholders of that series. *Goldberg,* at 4.

As noted earlier, the initial facilities were not self-sustaining, and in 1930 the states transferred the control, operation and the revenues of the Holland Tunnel to the Port Authority to help place the Port Authority on a self-sustaining basis. *N. J. S. A.* 32:1–119. Simultaneously, the states enacted legislation, commonly called the General Reserve Fund Act, *N. J. S. A.* 32:1–142, and by the terms of that act the surplus revenues derived by the Authority from all facilities built with the proceeds of sale of its bonds are pooled so as to create a general reserve fund in an amount equal to 10% of the par value of all bonds issued by the Authority. The act pledges the general reserve fund as security for the payment of interest and principal on all bonds theretofore or thereafter issued by the Authority. Surplus moneys of the Authority in excess of the general reserve fund requirements may be used for any purpose authorized by the states.

The general reserve fund thus becomes available to bondholders to pay the debt service requirements of facilities which were not self-supporting. By this device the surplus revenues of the Holland Tunnel were used to pay the debt service requirements of the Arthur Kill and Bayonne Bridges and the George Washington Bridge. The general reserve fund was also envisioned as a security device to induce the public to invest in future facilities such as the then contemplated Lincoln Tunnel project. See *Goldberg,* at 7.

Following the enactment of the General Reserve Fund Act the Port Authority issued additional series of bonds to finance the construction of the Inland Terminal Building and to repay

the states for the amounts expended by them to construct the Holland Tunnel. *Goldberg,* at 5. In 1935 the Authority commenced the issuance of a new series of bonds, known as general and refunding bonds, the proceeds of which were used to refund all of the original bridge bonds issued by the Authority and to finance the initial construction of the Lincoln Tunnel. These bonds were secured by a pledge of the net revenues of all of the Authority's then existing facilities and by the general reserve fund. Under the terms of the resolution authorizing the issuance of general and refunding bonds the Authority also contracted to create a special reserve fund into which would be paid all net revenues in excess of those required to pay the operating expenses of the Authority's facilities, the debt service requirements for the general and refunding bonds, and to maintain the general reserve fund at its prescribed level. *Goldberg,* at 11. The authorizing resolution imposed limitations on the use of the special reserve fund for the benefit of the bondholders.

In 1947 the Authority commenced the issuance of air terminal and marine terminal bonds, the proceeds of which were used for the acquisition and construction of various airport and marine terminal facilities. These bonds were secured by a pledge of the revenues of the specific facilities financed thereby, as well as by a call upon the general reserve fund to the extent that revenues from the facilities were insufficient to pay operating expenses and debt service requirements. As in the case of the general and refunding bonds, the air and marine terminal bond resolutions provided for their own special reserve funds for the benefit of the bondholders of each of these series.

In 1952 the Commissioners of the Port Authority embarked upon a new scheme for future financing which abandoned the practice of earmarking specific facility revenues as security for its bonds. On October 9, 1952 the Authority adopted the Consolidated Bond Resolution (the CBR), authorizing the issuance of consolidated bonds to serve as the medium for financing its activities in furtherance of any purpose for

which the Authority is authorized to issue bonds secured by a pledge of the general reserve fund.[9] Consolidated bonds constitute general obligations of the Authority, and all such bonds are equally and ratably secured by a pledge of the net revenues of all existing facilities and any additional facilities which may be financed in whole or in part by the issuance of consolidated bonds.[10]

With the adoption of the CBR the "self-supporting" facility concept which had governed earlier authority financing ceased to have the significance previously attached to it; for under the CBR the Authority's financial structure is based on a unitary enterprise concept and all revenues from all facilities are pooled. Individual facilities are not financed independently of the rest of the Authority. The facilities contribute their revenues for debt service on all Authority bonds according to their earning power and without regard to the amount of bonds issued for the construction of any particular facility.

While some facilities may not yield sufficient revenues to pay operating expenses and/or debt service requirements, what is of paramount concern to bondholders under the CBR is whether the total revenues of the Authority are sufficient to satisfy all of its obligations to bondholders. And in order to ensure that the abandonment of the "facility-by-facility" approach would not lead to a dilution of pledged revenues and reserves, the CBR contains covenants with the bondholders with respect to future operations and activities of the Authority and the issuance of bonds secured by a pledge of its revenues and reserves.

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[9]The Authority covenanted, by the CBR, that no additional general and refunding, air terminal or marine terminal bonds shall be issued.

[10]As noted *infra*, although general and refunding, air and marine terminal bonds are still outstanding, the Authority has fully funded its obligations to those bondholders and the consolidated bonds presently have a first call upon all revenues of the Authority.

One of the principal protections afforded bondholders by the CBR is the so-called "1.3 test" contained in section 3.[11] The 1.3 test prohibits the issuance of new consolidated bonds unless the best one-year net revenues of all of the Port Authority's facilities equal or are greater than 1.3 times the prospective debt service for the calendar year during which the debt service of all outstanding and proposed new bonds secured by a pledge of the general reserve fund would be at a maximum.[12] The 1.3 test is thus an equation in which one component consists of the Authority's net revenues from all facilities, and the other component is the maximum annual debt service required to be paid on all Authority bonds, including the new bonds to be issued. The maximum annual debt service component is readily calculable from the requirements set forth in the resolutions authorizing the bond issues.

[1] The annual net revenue component of the equation consists of the Authority's historical net revenues from existing facilities[13] plus the estimated average annual net revenues of the facility to be acquired or constructed with the issuance

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[11]While section 3 of the CBR provides alternate conditions for the issuance of consolidated bonds, in practice the 1.3 test described above is the least restrictive and has been the only one employed by the Port Authority since the adoption of the CBR. *Goldberg*, at 19.

[12]There is a dispute between the parties to this litigation whether a projected operating deficit of a facility to be acquired by the issuance of consolidated bonds must be deducted from net revenue for the purpose of determining whether the 1.3 test has been met. Under the terms of the CBR, if the facility to be acquired has been in operation for at least 36 months prior to the issuance of consolidated bonds, the annual operating deficit of the facility would be deducted from historical Authority net revenues in applying the 1.3 test. However, according to an Authority witness, if the facility to be acquired has not been in operation for at least 36 months, its projected operating deficit can be ignored. This view is contrary to the position of the Authority in statements made and testimony given to the Farley Committee. See *infra*, pages 152, 155–156.

[13]For this purpose the Authority is permitted to select any consecutive 12-month segment out of the 36-month period preceding the date of issuance of new consolidated bonds.

of new bonds.[14] While the 1.3 test speaks only of estimated net revenues and not of "deficits," it is evident from the purpose of the 1.3 test as well as Authority practice in arriving at historical net revenues that the estimated average annual *deficits* of a new facility must be charged against historical revenues in determining whether the 1.3 test has been met. The purpose of the 1.3 test is to protect existing bondholders against dilution of pledged revenues and reserves; if consolidated bonds are issued to acquire or construct a substantial deficit operation whose drain on Authority revenues is not included in the earning's component, the 1.3 test would be meaningless. Further, it is to be noted that in calculating historical net revenues of existing facilities the Authority arrives at one pooled figure which takes into account the deficits of such facilities.

Section 5 of the CBR directs the application of the pledged revenues to the payment of debt service upon all consolidated bonds, with the remaining balance to be paid into the consolidated bond reserve fund except to the extent necessary to be paid into the general reserve fund to maintain it at the level prescribed by statute.

Section 6 of the CBR provides that the payment of debt service upon all consolidated bonds "shall be further secured equally and ratably by the General Reserve Fund." Moneys in the general reserve fund may not be used for any purpose if there are other moneys of the Port Authority available for that purpose, unless there are sufficient funds available to the general reserve fund to pay debt service upon outstanding bonds during the ensuing 24 months, in which event such excess moneys could be used for any purpose permissible under the General Reserve Fund Act, whether or not other moneys were available for that purpose.

Section 7 of the CBR establishes a consolidated bond reserve fund into which all net revenues pledged as security

[14]The estimated average annual net revenue is based on estimated revenues for the first 36 months of operation of the new facility.

for consolidated bonds (after payment of debt service on all consolidated bonds and of amounts necessary to bring the general reserve fund to its statutory level) are required to be paid. The moneys in the consolidated bond reserve fund may be used only for the payment of: (a) consolidated bonds at maturity, retirement or redemption; (b) debt service upon outstanding consolidated bonds; (c) the deficit of any facility the net revenues of which were pledged as security for consolidated bonds, and (d) "any other additional purposes for which the Authority is now or may hereafter be authorized by law to expend the revenues of its facilities." The pledge of the net revenues of the Authority and of the moneys in the Consolidated bond reserve fund is subject to the right of the Authority to apply the revenues and the reserve fund as provided in section 7, and the right to issue bonds, other than consolidated bonds, secured by the reserve fund if such other bonds "are issued solely to fulfill obligations to or for the benefit of the holders of consolidated bonds and if such other bonds are also secured by a pledge of the General Reserve Fund."

Since the adoption of the CBR, capital expenditures of the Authority have been financed by the issuance of 41 series of consolidated bonds and short term notes. New facilities and improvements to existing ones have been funded without regard to the individual project's ability to generate income. This has enabled the Port Authority to undertake projects which would not be financially feasible alone but are possible because of the surplus revenues generated by its other facilities.[15] New projects undertaken since 1952 include the acquisition and/or construction of two heliports, the Brooklyn, Erie Basin, Elizabeth and Hoboken Marine Terminals, the Port Authority Trans-Hud-

[15]For the calendar year 1973, of the 22 facilities operated by the Authority, 14 were operated at a deficit, *i. e.*, the gross revenues were not sufficient to cover operating expenses and debt service requirements.

son (PATH) System, a bus terminal and the World Trade Center.

With respect to each series of consolidated bonds issued, the Authority adopts an authorizing resolution. Section 7 of each series resolution prohibits the issuance of any additional consolidated bonds or any other bonds to be secured by a pledge of the general reserve fund with respect to any facility or group of facilities as to which the Authority has not previously issued bonds unless

> * * * the Authority shall certify at the time of issuance its opinion that the issuance of such Consolidated Bonds or that such pledge of the General Reserve Fund as security for such bonds other than Consolidated Bonds will not, during the ensuing ten years or during the longest term of any of such bonds proposed to be issued (whether or not Consolidated Bonds), whichever shall be longer, in the light of its estimated expenditures in connection with such additional facility or such group of additional facilities, materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds; and the Authority may apply monies in the General Reserve Fund for purposes in connection with those of its bonds and only those of its bonds which it has theretofore secured by a pledge of the General Reserve Fund in whole or in part.

Each consolidated bond states that it "is issued pursuant to and in full conformity with the Compact between the States of New York and New Jersey creating the Authority, and the various statutes of said two States amendatory thereof and supplemental thereto, for purposes provided in said Compact and statutes". No specific statute is mentioned in the bonds.

On December 31, 1970 the Authority placed in trust with the First National City Bank, as trustee, $60,749,000 from the Authority's special reserve fund, air terminal reserve fund and marine terminal reserve fund to secure fully, unconditionally and absolutely the Authority's obligation to provide for the redemption as scheduled and the payment of interest until redemption on the Authority's outstanding

general and refunding bonds, air terminal bonds and marine terminal bonds. After the establishment and during the maintenance of these trusts no further payments are required to be made into such reserve funds. As a result the pledge of Authority revenues and reserves to secure repayment of consolidated bonds is no longer subject to the prior lien in favor of the earlier series of bonds. The maintenance of the reserve funds in trust permits the application of all net revenues and reserves of the Authority to the payment of the consolidated bonds.

As of December 31, 1974 the issued and outstanding consolidated bonds of the Authority totaled $1,668,584,000,[16] the general reserve fund contained $173,487,000 and the consolidated bond reserve fund $46,800,000. Gross and net operating revenues for 1974 were $410,412,000 and $156,118,000, respectively. After debt service and sinking fund requirements were met the Authority had available for transfer to its reserve funds $67,018,000, resulting in a net increase in its reserves of $18,293,000 for the year.[17]

The Legislative History of the 1962 Covenant.

So far as the record reveals, the history of New Jersey's involvement with mass transit begins with the enactment of *chapter* 104 of the *Laws of* 1922. The Legislature there established the North Jersey Transit Commission[18] to study

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[16]This total includes $200,000,000 of bonds issued as the 40th and 41st series following the prospective repeal legislation of 1973, which are not "affected bonds" and hence not covered by the terms of the 1962 covenant.

[17]As at December 31, 1974 the Authority owed to various banks on short term loans $255,000,000. During 1974 the banks were repaid $40,000,000, plus interest, from the consolidated bond reserve fund, which accounts for the difference between the amount available for transfer to the reserve fund and the actual increase in the reserve fund balance at the end of the year.

[18]The preamble to the North Jersey Transit Commission Act of 1922, see *infra*, notes that the Port Authority Comprehensive Plan

and report upon plans for providing a comprehensive scheme of rapid passenger transit[19] between northern New Jersey communities and New York City. In its 1925 and 1926 reports this Commission noted both the urgent need for and complexity of a rapid transit plan for the northern New Jersey area which would furnish direct access to the midtown New York City area.

In 1927 the New Jersey Legislature authorized and directed the Port Authority to make plans to provide for rapid passenger transit between the states and within the Port District. Similar legislation was adopted in New York but was vetoed by Governor Alfred E. Smith, who in his veto message noted his unwillingness to have the Port Authority diverted from its principal objective of solving the freight distribution problems within the District. Governor Smith's veto to all intents and purposes ended any legislative effort to involve the Port Authority in an active role in commuter transit for the next 30 years.[20]

The years between 1928 and 1958 were devoted to largely fruitless efforts by numerous groups, agencies and commissions to devise a solution for mass transit within the metropolitan New York-New Jersey area. No useful purpose would be served in cataloging their failures — which were not failures of purpose, effort or imagination, but the failure to find the source of funds required to implement any plan. In the meantime the financial position of existing com-

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"does not include the problem of passenger traffic in the territory covered by said port development plan." *L.* 1922, *c.* 104.

[19]For the purpose of this opinion the term "rapid passenger transit" has reference to transportation of passengers by railroad and will be used interchangeably with the terms "commuter transit" and "mass transit," although the latter terms conceivably could involve means of conveyance other than by railroad.

[20]In 1936 the states requested the Port Authority to report on interstate and suburban passenger transportation. *Jt. Res. No. Laws* of 1936. The Port Authority filed its report in 1937, which disclaimed its financial ability to undertake a solution to the transit problems of the District.

muter transit facilities continued to deteriorate. By 1955 the Hudson and Manhattan Railroad had filed a petition for reorganization under the federal bankruptcy laws,[21] and the private railroads were petitioning the Interstate Commerce Commission for permission to abandon ferry service across the Hudson and to discontinue various passenger services because of substantial operating deficits.[22]

In 1958 the Metropolitan Rapid Transit Commission[23] issued a report to the states of New Jersey and New York setting forth a proposal for the construction of a trans-Hudson loop commuter transit system at an estimated capital cost of almost $500,000,000. The report noted the need to coordinate and to achieve a balance between highway and rail transportation systems. The Commission pointed out:

> That balance does not exist today. The automobile drivers and the bus operators make use of roadways, tunnels, bridges and central area terminals which are tax free and are either publicly maintained or publicly developed out of user taxes and user fees. Private railroad companies must raise the capital (and pay the interest on it) to build their rights-of-way and provide the operating facilities, and must maintain them and pay taxes on them. Since 1930, billions of public dollars have been spent, and are still being spent, by federal, state and local governments in the development of highways, bridges and other facilities for vehicular traffic, but no public funds whatever have been spent during the same period in promoting or improving

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[21]As of this date the four private companies which operate commuter railroad services in New Jersey are all being reorganized under federal bankruptcy laws.

[22]By 1959 the four commuter railroads operating in northern New Jersey sustained a total passenger operating deficit of $58,300,000. The New York commuter railroads had an aggregate deficit from commuter operations estimated at between $10,000,000 and $15,000,000 for 1960. The Staten Island Ferry operated at a loss of about $6,000,000 for the year, and the New York City Transit System had an operating deficit of $20,000,000, exclusive of debt service charges of $87,000,000.

[23]The New Jersey Metropolitan Rapid Transit Commission was created pursuant to *L.* 1952, *c.* 194 and was consolidated with its New York counterpart by *L.* 1954, *c.* 44.

mass transportation by rail between the New York and New Jersey portions of the Metropolitan Area.

The imbalance has resulted in a constant and relentless deterioration of suburban rail service. Ferries are being abandoned, train service is reduced, petitions are filed for abandonments, cars are getting older without being replaced. Repeated increases in fares in an effort to match rising costs and to establish earnings which can be used to improve the properties are resisted by public regulatory bodies. The result is more constriction of service by railroads, with consequent further congestion of highway facilities. One very grave consequence has been the creation of a stupendous cycle of traffic congestion in the streets, constantly calling for still further enormous expenditure of public funds for still further vehicular traffic.

Obviously, the people and the governments within this New York-New Jersey Metropolitan area are now face to face with this looming crisis, and can no longer avoid it by conveniently looking the other way.

Capital for the construction of the trans-Hudson loop must be raised by a public agency and bonds issued by it must have some measure of public guarantee to be saleable. Revenue bonds for transit purposes have a bad reputation in the bond market because of the financial history and condition of transit systems. While it would be desirable that the users of the loop would pay through fares the full capital and operating cost all experience conclusively demonstrates otherwise. On the other hand, the public interest requires that the fares be established at a level to foster maximum usage and utility of the system and provisions must be made for possible deficits. In addition, it must be recognized that capital for construction and equipment cannot be secured merely by evidence that revenues will equal costs.

A study which had been prepared for the Commission on the financial structure of the proposed commuter transit system had suggested that "financing would not be available from any of the existing public authorities since this action would in some cases impair the obligations of the authorities' covenants with bondholders and would seriously affect the ability of the authorities to discharge the responsibilities for which they were established." Nevertheless, during the 1958 session of the New Jersey Legislature a bill was introduced (Assembly Bill No. 16) which provided that the Port Authority take over and financially develop, improve and operate interstate passenger rail transportation between

New Jersey and New York. The Port Authority submitted a statement to the Legislature in response to this bill in which it said, among other things:

This opposition is based on the conclusion of the Commissioners that: (1) It is legally, financially and contractually impossible for the Port Authority to assume the railroads' increasingly heavy deficits from commuter operations or the cost of developing a new and comprehensive rail rapid transit system; and (2) The assumption of rail transit deficits by the Port Authority, the self-supporting agency of the two States, would immediately cripple and very quickly destroy the program of the two States now under way for the continued development of their essential public port and harbor facilities, airports, and interstate arterial systems.

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In addition to the General Reserve Fund, various special reserve funds have been created as a result of contractual commitments with bondholders in support of the various issues of Port Authority bonds. As in the case of the General Reserve Fund, the Authority may apply moneys in the Special Reserve Funds for purposes relating only to those of its bonds secured by a pledge of the General Reserve Fund, including purposes relating to facilities financed by such General Reserve Fund Bonds.

All Port Authority revenues not applied to operation and maintenance and debt service *must* be paid into one or another of these reserve funds. There are no excess revenues which are free of this contractual commitment to bondholders.[24] [Emphasis supplied]

In its statement to the 1958 Legislature the Authority suggested that even if it were possible to ignore legal restrictions on the use of Authority net revenues to finance commuter rail deficits, such a course of action would impair the Authority's credit standing and adversely affect the ability of the Authority to carry out its then existing programs. To reinforce this view the Authority solicited and included in its statement similar expressions of opinion from members of the investment banking community.

In January 1959 a joint report was issued on Assembly Bill No. 16 by the New Jersey Assembly Committees on

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[24]In view of recent developments it should be noted that in its statement the Authority also opposed an increase in tolls for the Hudson River crossing since this would constitute an "unfair tax" upon motorists to subsidize rail transit.

Highways, Transportation and Public Utilities, and on Federal and Interstate Transportation. This report concluded that the Port Authority could not be called upon to undertake the entire rail passenger transit obligation because (1) no one could estimate the size of the deficit operation the Authority would be undertaking, and (2) while the Authority could absorb some deficit, its operations, taken as a whole, must be self-supporting.

Pressures for financial aid to and Port Authority involvement in commuter transit continued to mount, and in 1960 the New Jersey Senate created a committee (known as the Farley Committee) to study the financial structure and operations of the Authority. One of the principal subjects investigated by the Farley Committee was the Authority's role in commuter transit. At the time the Committee's hearings commenced its immediate concern was to find a means to continue the operations of the bankrupt Hudson & Manhattan Railroad (H & M). The bankruptcy reorganization proceedings involving the H & M had reached the point where, in 1959, the District Court had left the H & M with sufficient cash for operations to continue for only two years. See *In re Hudson & Manhattan Railroad Co.*, 174 *F. Supp.* 148 (S. D. N. Y. 1959), aff'd *sub nom. Spitzer v. Stichman*, 278 *F.* 2d 402 (2 Cir. 1960). The Authority's Executive Director, Austin Tobin, testified before the committee concerning his discussions with New Jersey Highway Commissioner Dwight Palmer to have the Port Authority acquire and operate the H & M. Tobin testified in September 1960:

> Faced with these legal and contractual commitments [to the Authority's bondholders], which are the whole basis of the Authority's credit, Commissioner Palmer and the Port Authority have been examining, beginning with our initial exploration of the possibility on last February 15, whether bi-state legislation could be fashioned under which the Authority might even acquire and finance the bankrupt and deficit-ridden Hudson & Manhattan properties and finance its modernization by the Port Authority as a new Port Authority facility.

> In other words, could any legal and financial plan be worked out that would meet the foregoing contracts with investors and, from the standpoint of maintaining the Port Authority's credit, guarantee that the Authority would not thereupon become generally or further involved in the deficits of the commuter railroads, both in New York and in New Jersey? Obviously, unless such a covenant could be established no Port Authority bonds could be sold either for the acquisition of the Hudson & Manhattan properties or for any other Port Authority purpose.
>
> Thus the core of the problem is whether or not the two States could, to use a phrase about it, 'build a statutory fence around' the Hudson & Manhattan by guaranteeing to investors that the Authority would not and could not become involved in the large and increasing deficits of the New York and New Jersey commuter railroads, which with the New York subways total a deficit of something like $150,000,000 a year.

In January 1961 Commissioner Palmer appeared before the Farley Committee and expressed his conclusion that the Port Authority should purchase and operate the H & M provided limitations were placed upon the Authority's role in mass transit. On this subject he testified:

> The Port Authority in my opinion must make money and accumulate reserves for the rainy day if it is to be equipped to meet the needs of our two states of New York and New Jersey. It does not have general taxing powers. Its only taxes are the tolls it collects from the users of its facilities. Its shareholders are the public, you and I, and the institutions that buy the bonds. Since the cost of financing often determines the feasibility of a project it stands to reason that you and I get more for our toll dollar in the way of modern and safe facilities if we make certain that the credit rating of the Authority remains intact.
>
> Now most of us realize that the matter of credit is not an exact science. The credit of an organization depends on quite a few factors; past performance, efficient management and calibre of personnel and markets for the product the institution has to sell; and last but not least — what investors think of the operation as a financial risk. It is, in the final analysis, the practical assessment of being repaid money that they lend to it.

Relating specifically to what ultimately became the 1962 covenant, Senator Wayne Dumont questioned Commissioner Palmer as follows:

Q. Commissioner, when the Port Authority made its proposal in September, at our hearings then, to take over the Hudson & Manhattan Tube, they surrounded their proposal with certain restrictions which, so far as I could tell were designed to eliminate any real obligation on the part of the Port Authority beyond taking over the Hudson & Manhattan Tubes, at least so far as the railroad field was concerned. Do you consider those restrictions that they surrounded this proposal with as reasonable ones? A. Yes, I do. And I have so stated in my proposal and I do it purely on the basis of what experience I may have had in the field of finance and industry, and of what we are hoping to obtain and acquire in the future in the expansion of facilities that the Port can supply.

* * * * * * * *

And it seems impossible, from all of my direct — and not through any other channels — direct contacts, to observe that money could be loaned for even the acquisition of the H&M in the event there was not some assurance that this just wasn't one bite of the cherry and that further transportation business was all to be pulled together. I think it's simply a question of whether the investor says yes or no, and at the present time my observation is the investor says no unless he has that limitation.

The following day the Port Authority's Vice-Chairman, James C. Kellogg, III, testified concerning the Authority's H & M plans. He emphasized that only by adopting what became the 1962 covenant could the Port Authority acquire and rehabilitate the H & M.

There is, of course, no possibility whatsoever that either the Port Authority or any one else could operate the H&M on a self-supporting basis. The bankrupt H&M has not paid a dividend since 1932; it has not been able to meet the interest on its bonded indebtedness and has been in receivership since 1954.

* * * * * * * *

On this estimate of the H&M losses [$5 million annually], and if we are able to satisfy prospective investors by statutory assurances that this proposal will not involve the Authority's General Reserve Fund in any other or further commuter deficit operations, we believe we can conscientiously certify, as we must under our indentures, that this financing will not impair the Port Authority's credit. On the other hand, if we are not in a position to cite such statutory assurances to those from whom we will have to borrow the money, and therefore, we are not in a position to make such a certification, we obviously would not be in a position to borrow money for the acquisition, let alone the improvement, of the H&M.

* * * * * * * *

All Port Authority revenues not applied to operation and maintenance and debt service *must* be paid into one or another of these

reserve funds. There are no excess revenues which are free from this contractual commitment to bondholders.

The most important pledges that the Port Authority has made to its bondholders are those relating to the issuance of bonds for new projects. These pledges were necessary since otherwise the security could be diluted, not only through the raiding of revenues and reserves, but just as disastrously by the unlimited issuance of bonds which have such revenues and reserves as their primary source of repayment.

It is because of this that the Port Authority had to covenant with its bondholders not to issue Consolidated Bonds supported by the General Reserve Fund for any new facility unless it can be demonstrated that, *including the new facility*, net revenues will be sufficient to cover by at least 1.3 times the maximum interest and principal payments due in any future year. Furthermore, bonds for a new facility cannot be issued with a pledge of the General Reserve Fund unless the Port Authority Commissioners certify that the issuance of the new bonds will not materially impair the sound credit standing of the Authority, the investment status of the Authority's bonds, or the ability of the Authority to fulfill its commitments and undertakings. Such protections for investors under open-end revenue bond issues are not uncommon.

Applied to the H&M proposal, I would like to make it clear that the question of whether or not we can borrow the $83,500,000 which is required, is not simply a question of whether or not we would have to pay a higher rate of interest on these funds. We can only submit to you the unanimous view of the Commissioners of the Port Authority that there is no possibility whatsoever of borrowing the money at all without a statutory assurance to investors that any future Port Authority responsibilities in the field of commuter rail transport over and above the present and existing interstate Hudson and Manhattan railroad system will not involve a pledge of the Port Authority's General Reserve Fund.

I say to you as a New Jersey Commissioner, and with all the sincerity that I can command, that there is nothing arbitrary or doctrinaire about this conclusion. It simply represents the Port Authority's credit. My business is investment financing and I say to you gentlemen that I could not sell a single Port Authority bond without such an assurance. If my responsibility were on the other side of the table, I would not buy a Port Authority bond that did not contain such an assurance. [Emphasis supplied]

Following Kellogg's prepared statement he was questioned by Senators Farley and Cowgill as to the binding effect

which the proposed covenant legislation could have on a subsequent legislature. The questioning proceeded as follows:

BY SENATOR FARLEY:

Q. Mr. Kellogg, I noticed in the latter part of your statement, you said you must be given assurance by the Legislature that if they directed the Port to proceed to purchase this property, they must make a pledge to the bondholders there be no further projects involving rail. Now I appreciate that if the Legislature directs you to enter into a contract involving the issuance of bonds, there will be no impairment of obligations of contract, but I must call to your attention and the members of your Commission that one Legislature cannot bind a subsequent Legislature involving policy. If, perchance, may I illustrate — ten, fifteen, twenty years from now the respective legislatures of New York and New Jersey importune your Port Authority Commission to do something in addition involving public service, one legislature cannot bind another involving policy. Do you follow me? A. I do.

Q. I appreciate the legal end of it involving obligation of contract, but in your statement that you be given assurance that no further services should be required of you involving rail forever hereafter — and how this legislature could bind a subsequent legislature I do not know. A. We'd have to say that to the bondholders, the ones that were going to purchase the new bonds, that we as Commissioners believe that this would not endanger the 1.3 ratio.

* * * * * * * *

BY SENATOR COWGILL:

Q. I want to clear one thing up. I got a little confused there for a minute on that policy business — in the event that the H&M were acquired on the basis of statutes passed by New Jersey and New York, they would not be called upon, that is, the Port Authority would not be called upon, to go into any further commuter problems of other roads. If bonds were issued under such legislation, you would not be able to issue any further bonds for anything else unless you were willing to certify that it would not — A. That's correct. It wouldn't say that the bonds couldn't be issued with a state guarantee later on for something else or something of that type, freight or anything else.

Q. It seems to me on that basis, that you enter a contract on the basis of legislation passed, that contract is going to stand and some later legislature is not going to be able to change it. A. That's right.

SENATOR FARLEY:

My question, Senator, was — and I appreciate we cannot impair obligations: In effect, would any commitment with the present legislature estop or attempt to estop any legislation involving public needs in the future? [No answer was given at this point].

Commissioner Clancy of the Port Authority followed Commissioner Kellogg to the stand and the following colloquy took place directed to the same point:

SENATOR FARLEY:

I say to you as a commissioner representing New Jersey we too have a responsibility of making sure that this is done thoroughly, intelligently and in a way that would be feasible and practical. It was testified today by Mr. Kellogg that the Port should not be bound by any other demand from the State Legislature relative to rail service. I pointed out to him — and may I say to you as a lawyer — we well appreciate that any direction we give you by enacting legislation, we could not impair any obligation such as contracts of bond issues. Likewise, you as a lawyer know that one legislature cannot bind the other involving policy five, ten, or twenty years hence. A. I appreciate that.

Q. So that when this Committee makes its report, we are not exonerating the Port from any responsibility for any demand for future public service by either the New York or New Jersey legislature. I want you to appreciate that fact. A. I appreciate that fully and I am aware of the fact if a situation such as that would arise in the future, that would be a matter that we would have to discuss on its own merits with a future Governor and future legislature.

Q. That's right.

* * * * * * * *

MR. TOBIN:

May I say something?

SENATOR FARLEY:

I want to call you, Mr. Tobin, relative to this situation. If you want to interject something at this time, we will be very happy to have you do so.

MR. TOBIN:

You might want to know that this legislative assurance, as Commissioner Kellogg pointed out, would only apply to future commuter

operations and only limits the use of the pledge of the general reserve fund. It only limits the pledge of the general reserve fund, nothing else. It would not typically bar Port Authority participation where some other scheme of guarantee of the bonds or something like that—

SENATOR FARLEY:

That would have to depend on its own merit or demerit and then be considered. But I call to your attention as a Commissioner the problem of the Legislature.

I am aware of the problem, but, of course, the action that is taken now with reference to the Hudson and Manhattan would not necessarily of itself bar future participation in the problem generally. It would, however, not be possible if that future participation involved any impairment of this reserve fund.

While the Farley Committee hearings were in progress the New York Legislature adopted legislation directing the Port Authority to acquire and operate the H&M, *Laws of N. Y.* 1961, *c.* 312, without any covenant against or limitation upon future Authority involvement in passenger rail transit. This legislation was not acceptable to the New Jersey Legislature because "the absence of such a covenant * * * endangered the future utility of the Port Authority to the two States." *Report of Senate Investigation Committee Under Senate Resolution Number 7 of the Year 1961,* at 23. The Committee's report, which was issued in 1963, notes that it sponsored the 1962 covenant legislation so as to limit

* * * by a constitutionally-protected statutory covenant with Port Authority bondholders the extent to which the Port Authority revenues and reserves pledged to such bondholders can in the future be applied to the deficits of possible future Port Authority passenger railroad facilities beyond the original Hudson & Manhattan Railroad system. [*Id.* at 24]

The 1962 covenant legislation was passed unanimously by both houses of the New Jersey Legislature on February 13, 1962 and Governor Hughes signed the bill on the same day. The New York Legislature followed suit on March 7, 1962, *Laws of N. Y.* 1962, *c.* 209, and the covenant legislation be-

came effective upon Governor Rockefeller's signature on March 27, 1962.

L. 1962, *c.* 8, authorized the Port Authority to proceed with the acquisition, construction and operation of a port development project which would include the World Trade Center and the H&M. *N. J. S. A.* 32:1–35.52. For this purpose the Authority was authorized to issue bonds for the project secured by a pledge of the general reserve fund. *N. J. S. A.* 32:1–35.53. The preamble of the act reflects the following legislative findings relevant to the H&M acquisition:

The States of New York and New Jersey hereby find and determine:

(1) that the transportation of persons to, from and within the Port of New York and the flow of foreign and domestic cargoes to, from and through the Port of New York are vital and essential to the preservation of the economic well-being of the northern New Jersey-New York metropolitan area;

(2) that in order to preserve the northern New Jersey-New York metropolitan area from economic deterioration, adequate facilities for the transportation of persons must be provided, preserved and maintained and that rail services are and will remain of extreme importance to such transportation of persons;

(3) that the interurban electric railway now or heretofore operated by the Hudson & Manhattan Railroad Company is an essential railroad facility serving the northern New Jersey-New York metropolitan area, that its physical plant is in a severely deteriorated condition, and that it is in extreme financial condition;

(4) that the immediate need for the maintenance and development of adequate railroad facilities for the transportation of persons between northern New Jersey and New York would be met by the acquisition, rehabilitation and operation of the said Hudson & Manhattan interurban electric railway by a public agency, and improvement and extensions of the rail transit lines of said railway to permit transfer of its passengers to and from other transportation facilities and in the provision of transfer facilities at the points of such transfers;

* * * * * * * *

(8) that the Port of New York Authority (hereinafter called the port authority), which was created by agreement of the 2 States as their joint agent for the development of the transportation and terminal facilities and other facilities of commerce of the port district and for the promotion and protection of the commerce of their port, is the proper agency to act in their behalf (either directly or by or through wholly-owned subsidiary corporations) to effectuate, as

a unified project, the said interurban electric railway and its extensions and the [World Trade Center] * * * [*N. J. S. A.* 32:1–35.50]

The operative provisions of the covenant are contained in the first paragraph of § 6 of *chapter* 8, *N. J. S. A.* 32:1–35.55, and they are as follows:

The 2 States covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority, (a) the 2 States will not diminish or impair the power of the port authority (or any subsidiary corporation incorporated for any of the purposes of this act) to establish, levy and collect rentals, tolls, fares, fees or other charges in connection with any facility constituting a portion of the port development project or any other facility owned or operated by the port authority of which the revenues have been or shall be pledged in whole or in part as security for such bonds (directly or indirectly, or through the medium of the general reserve fund or otherwise), or to determine the quantity, quality, frequency or nature of the service provided in connection with each such facility; and (b) neither the States nor the port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged in whole or in part as security for such bonds, for any railroad purposes whatsoever other than permitted purposes hereinafter set forth.

"Affected bonds" are defined as including all bonds secured in whole or in part by the general reserve fund or any other reserve fund established by contract between the Authority and the holders of its bonds. Since all consolidated bonds are secured by a pledge of the general reserve fund, as well as the consolidated bond reserve fund, all outstanding consolidated bonds, with the exception of those of the 40th and 41st series,[25] are affected bonds under the terms of the covenant.

"Permitted purposes" as defined in the statute include: (1) the H&M as it existed on the effective date of the legislation;

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[25]See *infra* at 179–180.

(2) any railroad freight facilities owned by the Authority; (3) railroad tracks on vehicular bridges owned by the Autority; and (4) passenger railroad facilities (other than the H&M) only if one of two conditions is met: (i) the Authority certifies that such other railroad facility is self-supporting, or (ii) if the general reserve fund contains the required statutory amount (10% of all outstanding Authority bonds) and the Authority certifies that the deficit of such other facility, together with the deficits of all other passenger railroad facilities owned by the Authority, will not exceed "permitted deficits" as thereafter defined.

A passenger railroad facility may be certified as "self-supporting" if its estimated average annual net operating income for the first ten years of operations is at least equal to the estimated average annual debt service on bonds issued in connection with the facility.

A passenger railroad "deficit" is defined as the average estimated annual debt service upon the bonds issued for passenger railroad purposes over the first ten-year period of operations less the average estimated annual net operating income of the railroad facility, or plus the average estimated annual net loss of the railroad facility. To illustrate: If the average annual debt service requirement is $10,000,000 and the average annual net operating income is $5,000,000, the statutory deficit is $5,000,000. If it is estimated that an average annual net loss of $5,000,000 will be incurred from operations, the statutory deficit would be $15,000,000.

A "permitted deficit" is a deficit which does not exceed (A) the amount of the passenger railroad deficit the payment of which one or both states is willing to guarantee for the period for which the Authority would be liable for such deficit, plus (B) the greater of (1) an amount equal to 10% of the general reserve fund at the end of the preceding calendar year less an amount equal to 1% of the Authority's bonds outstanding at the end of the preceding calendar year which were issued for passenger rail purposes (including the H&M), or (2) an amount equal to 10% of the amount

calculated under clause (1) plus 1% of the Authority's equity in all facilities other than passenger rail facilities.

Thus, assuming the States of New York and New Jersey enter into an agreement with the Authority to pay the deficit of a proposed passenger railroad facility, the deficit of such facility is a permitted deficit under the 1962 covenant and the Authority is authorized to issue its bonds for such purpose. In the absence of a guarantee by the states to pay any part of the deficit, the maximum permitted deficit must be calculated under (B) as reflected in the following illustration: Assuming the general reserve fund contains $175,000,000 and the Authority has outstanding bonds issued for the H&M and other passenger railroad purposes in the amount of $150,000,000, clause (1) permits the Authority to issue bonds secured by the general reserve fund if the estimated average annual deficits of all its passenger rail facilities, including the proposed facility, do not exceed $16,000,000 ($17,500,000 – $1,500,000). Assuming the same facts and an Authority equity in nonrailroad facilities of $1,200,000,000, under clause (2) the permitted deficit would be $13,600,000 ($1,600,000 + $12,000,000). Hence, on the assumed facts, since the amount calculated under clause (1) is greater, the permitted deficit would be $16,000,000[26].

On September 1, 1962, following enactment of the 1962 covenant legislation referred to above, the Port Authority, through a wholly-owned subsidiary (Port Authority Trans-Hudson Corporation or PATH), assumed ownership and operating responsibilities over the H&M. The Commissioners' 1962 certification with respect to the acquisition of the PATH System was made on the basis of an opinion of A. Gerdes Kuhbach, the Director of Finance of the Port Authority,

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[26]Since the annual deficits of the H&M (operated by the Authority under the acronym PATH) are substantially in excess of the permitted deficits calculated under 1963 covenant formula, the covenant prohibits the Authority from issuing any bonds for passenger rail purposes which would be secured by a pledge of the reserve funds of the Authority. See *infra* at 165.

which was prepared at the request of the Commissioners. His opinion analyzed and reviewed the financial aspects and data relating to the proposed acquisition, rehabilitation and operation of the PATH system. He concluded that the section 7 certification required under the series consolidated bond resolutions could be made, since the anticipated net loss after debt service for the years 1969 through 1991 would level off at approximately $6,595,000[27] per year, an amount that would not impair the sound credit rating of the Port Authority. More specifically, Kubach concluded that

> a) There is always a comfortable margin between the anticipated net loss and 10% of the estimated General Reserve Fund;
>
> b) Net revenues available for Reserves will not be materially diluted by undertaking the acquisition, rehabilitation and operation of the Hudson Tubes:
>
> c) The coverage of both annual obligatory long term debt service and future maximum debt service is sufficiently within the limits necessary to preserve the Port Authority's credit and to continue the issuance of Consolidated Bonds.
>
> I therefore conclude that the application of all or any portion of unexpended proceeds of Consolidated Bonds, Nineteenth Series, Due 1991, will not during the years 1962 through 1991, in light of the estimated expenditures in connection with the Hudson Tubes, materially impair the sound credit standing of the Authority or the investment status of the Consolidated Bonds or the ability of the Port Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds.

Since the enactment of the 1962 covenant the Port Authority has referred to the covenant in all official statements furnished to the public in connection with each series of consolidated bonds issued by the Authority. The reference is set forth under the heading "Statutory Covenant With Prior Affected Bondholders Against Dilution of Pledged Revenues and Reserves by Additional Passenger Railroad Deficits," and the terms of the covenant are then summarized. The first two sentences of text read as follows:

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[27]In 1962 the general reserve fund was approximately $69 million.

In connection with the legislation which authorized the Port Authority to assume responsibility for the Hudson Tubes system the Port Authority had advised the Legislatures of both States that the credit of the Port Authority would be impaired by such an undertaking of an anticipated perpetual deficit facility unless the States would enter into an enforceable contract with the Port Authority bondholders which would grant assurances against dilution of already pledged revenues and reserves by any additional passenger rail deficits beyond those of the basic Hudson Tubes System. The legislation as finally adopted includes such statutory covenants.

As of December 31, 1973 the Authority had invested $185,800,000 of its funds in the acquisition and improvement of PATH. The accumulated operating deficits of PATH (determined in accordance with ICC accounting practices) total $125,000,000,[28] of which approximately $17,000,000 constitutes depreciation. PATH has incurred an annual deficit after debt service for each of the last five years in excess of 10% of the general reserve fund. Accordingly, under the 1962 covenant the Port Authority would be precluded from pledging any of its revenues or reserves to any other deficit passenger railroad operation. In 1973, using the Authority's accounting procedures, the PATH deficit for the year, including debt service, was $24,913,000.

Following the enactment of the 1962 covenant legislation an action was instituted in the New York state courts challenging the validity of the statute by New York property owners. The principal issues presented in the action dealt with the legislative authorization to the Authority to construct the World Trade Center. The plaintiffs urged, among other things, that the legislation was unconstitutional because no congressional consent had been obtained. The New York Court of Appeals upheld the constitutionality of the covenant legislation, and the appeal therefrom was dismissed by the United States Supreme Court for want of a substantial fed-

[28]Using the Authority's method of accounting, the accumulated PATH deficit as of December 31, 1973 was $153,073,000, inclusive of debt service.

eral question. *Courtesy Sandwich Shop v. Port of N. Y. Auth.*, 12 *N. Y.* 2d 379, 240 *N. Y. S.* 2d 1, 190 N. E. 2d 402, app. dism. 375 *U. S.* 78, 84 S. Ct. 194, 11 L. Ed. 2d 141, *reh. den.* 375 *U. S.* 960, 84 S. Ct. 440, 11 L. Ed. 2d 318 (1963). The Court of Appeals disposed of the consent argument in the following manner:

This argument must fail because, assuming consent to be required for this sort of concurrent action, the congressional consent originally given in 1921 and 1922 to the bi-State compact creating the Port Authority expressly contemplated such further co-operative legislation in furtherance of port purposes as was here accomplished. * * * Among the Articles of Agreement consented to were articles III, VII and VI, which created the Port Authority with the powers enumerated plus "such other and additional powers as shall be conferred upon it by the legislature of either State concurred in by the legislature of the other." Similarly, article XI, following the agreement for an initial comprehensive plan in article X, provides that the Port Authority should "from time to time make plans for the development of said district, supplementary to or amendatory of any plan theretofore adopted, and when such plans are duly approved by the legislatures of the two States, they shall be binding upon both States with the same force and effect as if incorporated in this agreement." Chapter 209 clearly falls within the congressional consent given to the articles contemplating the grant to the Port Authority of additional powers within the framework of the compact. [12 *N. Y.* 2d at 391, 240 *N. Y. S.* 2d at 7, 190 N. E. 2d at 406]

The lack of congressional consent to the covenant legislation was also raised by Port Authority bondholders in *Port Authority Bondholders Pro. Com. v. Port of N. Y. Auth.*, 387 *F.* 2d 259 (2 Cir. 1967). The Court of Appeals affirmed the dismissal of the bondholders complaint, having concluded that the United States Supreme Court's disposition in *Courtesy Sandwich Shop* had labeled the question "as unsubstantial." 387 *F.* 2d at 262.

In 1971 Theodore Kheel, Esq., and others instituted a class action in the United States District Court for the Southern District of New York challenging the constitutionality of the 1962 covenant on the grounds that it restricted the Authority's power to devote its revenues to nonself-supporting passenger rail facilities, in violation of the Compact and

Commerce Clauses of the United States Constitution, and impaired legislative sovereignty. The District Court dismissed the complaint, relying in part upon the disposition made in *Courtesy Sandwich Shop. Kheel v. Port of N. Y. Auth.*, 331 *F. Supp.* 118 (S. D. N. Y. 1971), aff'd on other grounds, 457 *F.* 2d 46 (2 Cir. 1972), *cert. den.* 409 *U. S.* 983, 93 S. Ct. 324, 34 L. Ed. 2d 248 (1973).

Legislative History of the Repeal of the 1962 Covenant.

Despite the enactment of the 1962 covenant, during the latter part of the 1960's and continuing to date there has been increasing public and governmental demand for the Port Authority to make a greater contribution toward a solution of the mass transit problems within the Port District. The critics of the Port Authority, as well as responsible executive and legislative officials, have focused primarily upon the utilization of the surplus earning capacity of the Authority's existing facilities to finance further Authority acquisition of or direct subsidies to mass transit facilities. It may be noted that between 1961 and 1970 the net revenues of the Authority had increased from $68,000,000 to $115,000,000, and over that period the Authority had available to it $454,000,000 in funds in excess of its debt service requirements.

In July 1964 Congress enacted the Urban Mass Transportation Act of 1964 (49 *U. S. C. A.* §§ 1601 *et seq.*), expressing for the first time a federal legislative interest in the support of urban mass transportation systems. In enacting the 1964 act Congress found (49 *U. S. C. A.* § 1601(a)):

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the welfare and vitality of urban areas, the satisfactory movement of people and goods within such areas, and the effectiveness of housing, urban renewal, highway, and other federally aided programs are being jeopardized by the deterioration or inadequate provision of urban transportation facilities and services, the intensification of traffic congestion, and the lack of coordinated transportation and other development planning on a comprehensive and continuing basis; and

(3) the Federal financial assistance for the development of efficient and coordinated mass transportation systems is essential to the solution of these urban problems.

The purposes of the 1964 act were declared to be (49 *U. S. C. A.* § 1601(b)):

(1) to assist in the development of improved mass transportation facilities, equipment, techniques, and methods, with the cooperation of mass transportation companies both public and private;

(2) to encourage the planning and establishment of areawide urban mass transportation systems needed for economic and desirable urban development, with the cooperation of mass transportation companies both public and private; and

(3) to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies as determined by local needs.

The scope of the 1964 act was expanded by the Urban Mass Transportation Assistance Act of 1970 on the basis of a finding by Congress (49 *U. S. C. A.* § 1601a) that "the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of all citizens to move quickly and at reasonable cost an urgent national problem."[29]

In April 1970 Governors Cahill and Rockefeller announced a joint program to increase the Port Authority's role in mass transportation by building a rail link to John F. Kennedy International Airport and extending PATH to Newark International Airport and other parts of New Jer-

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[29] In November 1974, after the repeal of the 1962 covenant, Congress enacted the National Mass Transportation Assistance Act of 1974, which provided $11.8 billion over the next six years for mass transit capital expenditures and, for the first time, operating subsidies on a matching basis.

sey. Bills were introduced in the New Jersey and New York Legislatures authorizing the Port Authority to undertake mass transportation projects providing access to John F. Kennedy and Newark International Airports. In March 1971 joint hearings were held in New York and New Jersey by the New York State Assembly Committee on Corporations, Authorities and Commissions and by the Autonomous Authorities Study Commission of the New Jersey State Legislature with respect to the relationship of the Port Authority to mass transportation and the proposed passenger rail links to the airports. In June 1971 the Legislatures of New York and New Jersey enacted legislation authorizing the Port Authority to extend passenger rail transportation to Kennedy International Airport and to Newark International Airport and Cranford. *L.* 1971, *c.* 245; *N. J. S. A.* 32: 1–35.20 *et seq.* The sponsors of this legislation sought to avoid the limitations of the 1962 covenant by characterizing the proposed new railroad facilities "as constituting a part of each air terminal" rather than independent passenger railroads. *L.* 1971, *c.* 245, § 1. While this legislation was pending, the Port Authority obtained opinion letters from two New York law firms which concluded that the proposed rail extensions were subject to the provisions of the 1962 covenant and could not be financed out of Port Authority revenues or reserves unless "self-supporting" since PATH had used up all of the "permitted deficits" allowed by the covenant.

Following the enactment of the 1971 legislation the Commissioner of the New Jersey Department of Transportation commissioned a consulting firm to report on the Authority's ability to finance and operate the New Jersey PATH extension under the terms of existing covenants with bondholders, and to propose alternative financing programs if the Authority could not. The consultant's report was submitted in December 1971. At the outset it was noted that on the assumption the proposed additional facilities would operate

at a deficit, the 1962 covenant prohibited Authority financing and operation since the PATH deficit already exceeded the "permitted deficits" allowed by the covenant. The conclusion of the report was that the Port Authority was not, under the 1962 covenant, in a "favorable position" to provide the additional financing necessary for the proposed extensions of existing passenger rail facilities. The consultants recommended as an alternative solution the removal of PATH from the Authority's control so that the latter would no longer be responsible for its deficits.

In June 1972 the Port Authority and New Jersey Department of Transportation concluded on the basis of an engineering cost study that the proposed extension of PATH via Newark Airport to Cranford was not economically feasible under the terms of the 1962 covenant.

In the same month the State of New York passed a bill repealing the 1962 covenant. *Laws of* N. Y. 1972, *c.* 1003. Governor Rockefeller's message on the signing of that legislation stated:

> I am approving this bill in order to give incentive to the Port of New York Authority to proceed with urgently needed mass transportation facilities in the metropolitan region.
>
> Passed with overwhelming bipartisan support in both houses of the Legislature, the bill removes the absolute statutory prohibition against the use of the revenues of the Port of New York Authority for railroad purposes. That statutory covenant, together with the provision of the bi-state compact creating the Authority that neither State will construct competing facilities within the Port District, could forever preclude the two states from undertaking vitally needed mass transportation projects. In removing the present restriction, the bill would not jeopardize the security of Port Authority bondholders or their rights to maintain that security.
>
> * * * * * * * *
>
> New York, by the enactment of this measure, is taking an essential step in its long-range effort to realize the full potential of the Port Authority in meeting the total transportation needs of the New York-New Jersey port district. The Port Authority's active participation in helping to solve the problems of mass transportation in the New York City metropolitan area will inure to the benefit not only of millions of area residents generally, but also to the port facilities operated by the Authority and the workers and businesses that rely

on them. This bill is consistent with the original purpose of the Port Authority — to ensure the coordinated development of terminal, transportation and other facilities of commerce in and about the port district for the greater benefit of the people of New York and New Jersey.

The repeal of the 1962 covenant adopted by New York proved to be unacceptable at that time to the New Jersey Legislature and Governor Cahill, and on November 15, 1972, following a series of meetings among Governors Cahill and Rockefeller and the Commissioners of the Port Authority, the Governors announced agreement on a bi-state plan of passenger rail transportation development by the Port Authority. The plan provided for the extension of PATH via Newark Airport to Plainfield, direct rail service from Kennedy Airport to New York City, and direct rail service to Penn Station, New York, for riders of the Erie Lackawanna Railroad in six northern New Jersey counties and two counties in New York. The estimated total cost of the plan was $650,000,000 and it was estimated that the Port Authority would invest between $250,000,000 and $300,000,000, with the balance of the funds being furnished by grants from the Federal Urban Mass Transportation Administration and the states. The Governors also proposed to repeal the 1962 covenant with respect to bonds issued subsequent to the enactment of the legislation proposed by the Governors.

On December 11, 1972 the New Jersey Senate held an information session to consider pending Port Authority mass transit bills. During this session representatives of the Port Authority and of Governor Cahill's office stated that the State of New Jersey would have to commit substantially all of the funds then available to the State of New Jersey from the Federal Urban Mass Transportation Administration.

The legislation embodying the 1962 covenant was amended by the State of New Jersey on December 28, 1972, *L.* 1972, *c.* 208, so as to repeal the 1962 covenant with respect to

Authority bonds issued after the effective date of the legislation. The New York Legislature enacted concurrent legislation which became effective on May 10, 1973. *Laws of N. Y.* 1973, *c.* 318.

On April 22, 1974 the New Jersey Legislature enacted *chapter* 25 of the *Laws of* 1974 (the "repeal act"). Governor Byrne signed the bill on April 30, 1974. Section 1 of this act repealed section 3 of *chapter* 208 of the *Laws of* 1972, the effect of which is to repeal, retroactively, the 1962 covenant as to all issued and outstanding "affected bonds" issued by the Port Authority. The introducer's statement annexed to the Assembly Bill No. 1304 (which became *chapter* 25), sums up the intent and purpose of the action taken:

This bill is designed to preclude the application of the 1962 covenant restricting port authority participation in mass transit projects. Chapter 208, P. L. 1972, precluded such application to bonds newly issued after the effective date of that act, but maintained in status quo the position of holders of bonds issued between March 27, 1962 and December 28, 1972. Since affected bonds are outstanding until the year 2007, the restrictions imposed by the covenant effectively preclude sufficient port authority participation in the development of a public transportation system in the port district. In 1972 the State of New York passed legislation precluding the application of the 1962 covenant from outstanding bonds as well as newly issued bonds. It is the purpose of this act to accomplish effective repeal of the covenant.

Concurring legislation was signed into law by Governor Wilson of New York on June 15, 1974. *Laws of N. Y.*, *c.* 993. Governor Wilson issued a statement when he signed the bill, in which he said in part:

In response to my inquiry, the Chairman of the Port Authority has also advised me that because of the heavy long term capital commitments for the PATH facilities and the Kennedy rail link, the Authority has no significant capacity to contribute funds for operating subsidies for commuter railroads. Hence, the plain and simple fact of the matter appears to be that the Authority has virtually no excess funds that could be channeled into operating subsidies for mass transportation facilities in the New York metropolitan area.

Even if such funds were available, existing bond indenture provisions which survive despite repeal of the statutory covenant would prohibit their use except in relation to facilities owned, leased or operated by the Port Authority.

The legislative history of the repeal of the covenant would not be complete without reference to other developments which were of immediate and continuing concern to the states and the nation at or about the time the repeal legislation was enacted. Commencing in the early 1950's and continuing to date the two states initiated studies of air pollution problems in their jurisdictions, and legislative action to control air pollution was undertaken by New Jersey as early as 1954, see *N. J. S. A.* 26:2C–1 *et seq.*, and by New York in 1957, see *Laws of N. Y., c.* 931. In 1955 the United States Congress enacted the Clean Air Act, 42 *U. S. C. A.* § 1857 *et seq.*, the preamble of which sets forth the following findings (among others):

(a) The Congress finds —

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration and property, and hazards to air and ground transportation.

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments * * *

The studies which were undertaken identified automobile exhaust emissions as a significant contributing factor in air pollution, and as the primary source of air pollution in the City of New York. In 1962 the State of New York adopted legislation requiring the installation of positive crankcase devices on new cars. *Laws of N. Y.* 1962, *c.* 994. While similar legislation was not enacted in New Jersey, the State did institute on February 1, 1974 an auto emission

testing program as part of the mandatory motor vehicle inspection system.

The efforts of the states to alleviate health hazards associated with air pollution were given a major impetus by the congressional enactment in 1970 of amendments to the federal Clean Air Act, 42 *U. S. C. A.* § 1857(*c–l*) *et seq.*, pursuant to which the Administrator of the federal Environmental Protection Agency was authorized to establish national air quality standards and to prescribe, upon the failure of a state to do so, the steps necessary to achieve compliance with those standards.

On November 13, 1973, after the State of New Jersey failed to present an acceptable plan for achieving compliance with the national air quality standards for hydrocarbons and carbon monoxide, the federal Administrator promulgated regulations designed to achieve a major reduction in hydrocarbon and carbon monoxide pollution in the northern part of New Jersey. 38 *Fed. Reg.* 31388 *et seq.* The federally-mandated plan for New Jersey included the mandatory use of retrofit devices on gasoline-powered vehicles and "the application of certain transportation control measures including a requirement for a significant reduction in vehicle miles traveled." 38 *Fed. Reg.* 31389. The Administrator also emphasized the importance of the development of mass transit to the effort to improve New Jersey's air quality:

The development of large-scale mass transit facilities and the expansion and modification of existing mass transit facilities is essential to any effort to reduce automotive pollution through reductions in vehicle use. The planning, acquisition, and operation of a mass transit system is, and should remain, a regional or State responsibility. Many improvements are being planned in mass transit facilities in the State that will make it possible for more people to use mass transit instead of automobiles. * * * [38 *Fed. Reg.* 31389]

Finally, reference must be made to the energy crisis, the dimensions of which became a matter of national concern in the fall of 1973 with the imposition of an oil embargo by

Arabian suppliers of crude oil and the rapid escalation of the price of oil. On February 4, 1974, two months before the repeal legislation was enacted, the New Jersey Legislature passed the Emergency Energy Fair Practices Act of 1974 (*L.* 1974, *cc.* 2, 6).

Section 2 of that act stated:

> **The Legislature finds and determines that because of world conditions and the manner in which energy sources and fuels are allocated and distributed that an energy shortage now exists and may continue for the foreseeable future.**

Section 3 of the act authorized the Governor "to proclaim by Executive Order the existence of an energy emergency" and to establish a State Energy Office and appoint an Administrator with broad powers to control the use and distribution of all fuels. On February 5, 1974 Governor Byrne issued Executive Order No. 1 in which he proclaimed the existence of an energy emergency, created the State Energy Office and established the position of Administrator of that office.

In December 1973 the Regional Plan Association issued a report on the relationship of the energy crisis to transportation. Its findings noted the decline of public mass transit in the metropolitan region and the increased consumption of fuel caused by reliance upon private automobiles to satisfy the major passenger transportation demand of the region. The Association pointed out that

> **If we are serious about meeting a profligate demand for energy over the long pull, we will have to begin now to design a Region that is less energy consumptive in transportation and in its development pattern.**

While the immediate effects of the oil embargo have been dissipated, the nation is still confronted with the long-range effects of oil price increases, particularly as they bear upon the economic well-being of the country. On February

21, 1974 President Nixon described the problem in these terms in a special message to Congress on the energy crisis:

> **We must also face the fact that when and if the oil embargo ends, the United States will be faced with a different but no less difficult problem. Foreign oil prices have risen dramatically in recent months. If we were to increase our purchase of foreign oil, there would be a chronic balance of payments outflow which, over time, would create a severe problem in international monetary relations. [*U. S. C. Cong. and Admin. News*, 93rd Cong., 2d Sess. at 36.]**

The President further observed, "it is widely recognized now that the development of better mass transit systems may be one of the key solutions to both our energy and environmental problems." *Id.* at 42. Congress has repeatedly made similar findings. For example, the Regional Rail Reorganization Act of 1973, enacted on January 2, 1974, contains specific findings by Congress that "rail service and rail transportation offer economic and environmental advantages with respect to * * * energy efficiency and conservation * * * to such extent that the preservation and maintenance of adequate and efficient rail service is in the national interest," and that "railroads are one of the most energy-efficient modes of transportation for the movement of passengers and freight." 45 *U. S. C. A.* §§ 701, 761.

Bondholder Reliance on the 1962 Covenant and the Effects of Repeal.

Commencing with the issuance of the 20th series of 1962 the Authority advised potential investors of the existence of and protection afforded by the 1962 covenant by including detailed reference to the covenant in the official statements distributed to the public. U. S. Trust alleges in its complaint that purchasers of the Authority's consolidated bonds relied on the notice thus given to them in making their purchases. It is also alleged that the repeal of the covenant has diminished and will continue to adversely

affect the value of the bonds in the secondary market.[30] These issues were the subject of a trial at which U. S. Trust produced four witnesses in its behalf, together with numerous exhibits. Defendants relied upon cross-examination of plaintiff's witnesses plus their own exhibits.

Port Authority consolidated bonds are known in the market place as revenue bonds, *i. e.*, they are payable solely from the revenues and reserve funds derived from the facilities operated by the Authority. In the main these bonds are sold to relatively sophisticated institutional investors either for their own accounts or for the accounts of others whose investment funds they manage. Since the bonds carry a fixed rate of return and must compete against other similar types of securities available in the market place, the interest rate fixed when the bonds are initially marketed, as well as the price of the bonds in the secondary market, will normally reflect the investor's evaluation of the underlying security of his investment and the prevailing interest rates available on similar types of securities.

Prior to 1962 the Authority had successfully marketed several hundreds of millions of dollars of its consolidated bonds without the existence of the covenant. Presumably those issues were marketed on the strength of the Authority's overall revenues and reserves as well as in reliance on the previously enacted statutory covenants and the covenants contained in the CBR. The interest rates on these bond issues varied from a low of 2¼% (the 2nd and 4th series) to a high of 4¼% (16th series). The interest rate on the last bond issue offered prior to the enactment of the covenant was 3½% (19th series).

In the early 1960's, prior to the enactment of the 1962 covenant, the likelihood of legislation directing the Authority to take over the H & M became apparent. The record strongly suggests that the Authority itself took the

[30]The secondary market in this context refers to the over-the-counter price at which the bonds are traded after the initial offering.

initiative in arousing the concern of the investment banking community to the implications of such legislation for the future financial well-being of the Authority. Whether this action was attributable to the Authority's fear of the "disease" of mass transit, see *Goldberg*, at 22, or a legitimate concern as to the Authority's ability to absorb substantial mass transit deficits is not the point; the fact of the matter is that the Legislature of 1962 concluded it was necessary to place a limitation on mass transit deficit operations to be undertaken by the Authority in the future so as to promote continued investor confidence in the Authority.

The fact of the covenant's existence and its terms were communicated to the public and were a matter of general knowledge among investment bankers, institutional investors and dealers in Authority bonds. It may fairly be said, however, that few, if any, members of the investment community ever analysed closely the actual effect of the 1962 covenant upon bondholder security. The principal witness offered by U. S. Trust in support of its contentions, John F. Thompson, whose credentials and qualifications are impeccable, when asked to compare the protections afforded bondholders by the 1962 covenant with the restrictions imposed by the CBR (*i. e.*, the 1.3 test and the section 7 certification required by the bond series' resolutions), testified:

> Well the 1962 covenant and its requirements, require more specific determinations by the commissioners, by the staff and the commissioners as to the earnings or prospects of deficits involved, and they are — well, in the case of the Section 7 requirements, the commissioners can simply rule or state their opinion that the requirement would not harm the holders of the outstanding debt. In the case of the 1.3 times, they are permitted estimates of future earnings to some degree as well as the historical earnings. This is a test which might be complied with on the initiation of a deficit rail facility, and later be found to have not avoided deficits by any means as given the propensity of these deficits to greatly increase.
>
> The determinations which must be made under the covenant, I believe, are much more susceptible to active testing, by those looking at the Port Authority from the outside, and those in the investment community a much more secure feeling about the future profitability of the Port Authority.

Based upon the testimony offered by plaintiff, the investment community's understanding of the covenant was that it in some manner furnished "security for the bondholders and it protected the diversion of the earnings of the Port Authority into deficit mass rail transit." If the covenant is to be understood in that sense, the record supports plaintiff's claim that investors relied on the covenant in purchasing Authority bonds. But while reliance existed, the covenant cannot be said to have been the "primary consideration" for the purchases having been made, for no witness testified that purchases would *not* have been made without the covenant, but only that they would not have purchased or recommended the purchase of the bonds "at the price which they were then offered."

The limited role of the covenant on the Authority's credit standing is also reflected in the ratings assigned to Port Authority bonds by the principal rating services, Moody's and Standard and Poor's. Both have rated Authority bonds as "A" bonds, meaning that they are of investment quality and no default in payment of principal or interest is anticipated. The bonds carried the same rating prior to the enactment of the covenant, after it was enacted, after it was prospectively repealed, and after the repeal act of 1974. As suggested in the reports of the rating services, the rating assigned to Port Authority bonds is an amalgam of many factors, including not only the covenant but "the Authority's strong operating, financial and management record".[31]

Following the 1962 covenant legislation the Port Authority issued 20 series of bonds prior to the enactment of the prospective repeal which became effective on May 10, 1973. The interest rates on these bonds ranged from a low of 3-1/4% (20th series) to a high of 6-5/8% (35th series). After the prospective repeal was enacted, the Authority marketed

[31]As expressed by one of the witnesses, the Authority "has been well-run, well-organized, well-managed * * *. It's continually shown good revenues."

two additional bond issues, the 40th and 41st series, which carried interest rates of 6% and 5-1/2%, respectively. While it is claimed by plaintiff that the last two series of bonds are indirectly protected by the covenant until the "affected" bonds are retired in the year 2007, it is clear that the interest rates which the Authority has had to pay on non-affected bonds were not materially affected by the absence of direct covenant protection.

Plaintiff also attempted to show through its witnesses and exhibits that the repeal of the covenant adversely affected the secondary market for Authority bonds.[32] This conclusion was expressed by several witnesses who voiced the opinion that not only was the secondary market price of the bonds adversely affected, but that the nature of the market was altered in the sense that the market for the bonds became thin[33] and large institutional investors refused to purchase the bonds after repeal. There can be no question but that immediately following repeal and for a number of months thereafter the market price for Port Authority bonds was adversely affected. This was conclusively demonstrated by plaintiff's exhibits comparing the market price of selected Port Authority bonds, before and after repeal, with the prices of comparable bonds over the same period.

The problem presented by plaintiff's proofs, however, is that they do not show that the adverse effect attributable to the covenant repeal was permanent. Thus, immediately prior to repeal the price of Massachusetts Port Authority bonds was approximately two points higher than that quoted for New York - New Jersey Port Authority bonds having the same interest rate and a similar maturity.[34] The spread in

[32]The repeal became effective when the concurrent New York legislation was signed by Governor Malcolm Wilson on June 15, 1974.

[33]A "thin" market is one characterized by a low volume of trading in which the price structure of the market is subject to sharp fluctuation by relatively small buy or sell orders.

[34]The bonds prices referred to in the text are derived from Exhibits P–90 and S–3 and the trial transcript.

favor of "Mass Ports" fluctuated immediately after repeal but showed a market tendency to increase until it reached a maximum of 6-1/2 points on August 2. The spread continued to fluctuate thereafter and reached a maximum of 12 points by December 13, 1974. By January 3, 1975 the spread had narrowed to three points, and never exceeded four points through January 23, 1975. By the date of the trial the spread was reduced to two points, which is the same differential that existed prior to the effective date of the repeal.

Furthermore, beginning in August 1974 there were other factors which unquestionably contributed to the adverse price differential prevailing between Port Authority bonds and those of comparable issues. On August 15, 1974 the *Wall Street Journal* carried a story detailing the Authority's problems in completing and renting space in the World Trade Center. Then, on November 10, 1974, the *New York Times* ran a multi-column feature story with the headline "Port Authority Has Fallen on Hard Times." This story, like the one carried by the *Wall Street Journal* in August, referred to the Authority's difficulties at the World Trade Center and its losses on that project, estimated in the article to be as high as $25,000,000 a year.[35] The article also suggested that other Authority facilities which formerly had been profitable were breaking even or losing money. It is to be noted that Port Authority bonds suffered their sharpest decline for the whole period under review during the one month period following the *New York Times* article. On November 8, 1974 the bonds were quoted at 78, and by December 13, 1974 the price had dropped to 65.

The bottom line of plaintiff's proofs on this issue is simply that the evidence fails to demonstrate that the secondary market price of Authority bonds was adversely affected by the

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[35]The latest available figures disclose that the World Trade Center incurred a deficit for the year 1973 of $16,460,000.

repeal of the covenant, except for a short-term fall-off in price, the effect of which has now been dissipated insofar as it can be related to the enactment of the repeal

The Validity of the Repeal of the Covenant.

[2] Plaintiff's position here is premised on the proposition that the 1962 covenant legislation created a contract between the States of New Jersey and New York and the bondholders of the Port Authority which prohibited the use of Port Authority revenues and reserve funds for passenger railroad purposes except as expressly permitted by the terms of the act. The repeal act of 1974, it is said, impairs the obligation of that contract in violation of *U. S. Const.*, Art. I, § 10 of the United States ("No State shall * * * pass any * * * Law impairing the Obligation of Contract * * *") and *N. J. Const.* (1947), Art. IV, § VII, par. 3. ("The Legislature shall not pass any * * * law impairing the obligation of contracts * * *).[36]

[3] At the outset it is essential to define the terms of the contract and the nature of the impairment claimed by plaintiff. When the 1962 covenant was enacted there was in existence the CBR of 1952, pursuant to which the Authority had pledged its net revenues and the reserve funds as security

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[36]Plaintiff also urges that the repeal act contravenes the Fifth and Fourteenth Amendments of the United States Constitution and Article I, par. 20 of the New Jersey Constitution. The contention is that the repeal constituted a "taking" of property without due process of law, *i. e.*, just compensation. This issue will not be considered in this opinion for the following reasons: (1) to the extent that the claim is based upon an alleged reduction in the secondary market price of Authority bonds, it has been factually rejected *supra*, and (2) the test of constitutional validity as applied to repeal legislation is the same under the Contract and Due Process Clauses, *i. e.*, if an unlawful impairment has occurred there has been a "taking," and if not, then there is no taking. See *Veix v. Sixth Ward B. & L. Ass'n*, 310 *U. S.* 32, 41, 60 S. Ct. 792, 84 L. Ed. 1061 (1940); *Lynch v. United States*, 292 *U. S.* 571, 578–581, 54 S. Ct. 840, 78 L. Ed. 1434 (1934); Hale, "The Supreme Court and the Contract Clause: III," 57 *Harv. L. Rev.* 852, 890 (1944).

for the payment of debt service on all consolidated bonds. The CBR and the series' resolutions, pursuant to which all outstanding consolidated bonds were issued, constitute a contract between the bondholders and the Authority, and that contract was unaffected by the enactment of the 1962 covenant. The covenant superimposed upon the security provisions of the CBR and the series' resolutions the further agreement of the states that neither the Authority's revenues nor its reserve funds would be used for any additional passenger railroad facility whose estimated deficit would exceed 10% of the amount in the general reserve fund.[37] To the extent that the repeal of the covenant authorizes the Authority to assume greater deficits for such purposes, it permits a diminution of the pledged revenues and reserves and may be said to constitute an impairment of the states' contract with the bondholders.[38] *Bronson v. Kinzie,* 42 *U. S.* (1 *How.*) 311, 11 L. Ed. 143 (1843); *Planters' Bank of Miss. v. Sharp,* 47 *U. S.* (6 *How.*) 301, 327, 12 L. Ed. 447 (1848); *Hawthorne v. Calef,* 69 *U. S.* (2 *Wall.*) 10, 17 L. Ed. 776 (1864); *Von Hoffman v. City of Quincy,* 71 *U. S.* (4 *Wall.*) 535, 18 L. Ed. 403 (1867); *W. B. Worthen Co. v. Kavanaugh,* 295 *U. S.* 56, 55 S. Ct. 555, 79 L. Ed. 1298 (1935); *New Jersey Highway Authority v. Sills,* 109 *N. J. Super.* 424 (Ch. Div. 1970), supplemented 111 *N. J. Super.* 313 (Ch. Div.

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[37]The statutory formula for permitted deficits is set forth in more precise detail, *supra* at 162–163.

[38]It is not disputed by defendants that a legislative enactment, such as the 1962 covenant, may constitute a contract. Such has been the law since *Fletcher v. Peck,* 10 *U. S.* (6 Cranch.) 87, 3 L. Ed. 162 (1810). See also, *New Jersey v. Yard,* 95 *U. S.* 104, 114, 24 L. Ed. 352 (1877), where the court said: "It has become the established law of this Court that a legislative enactment * * * may contain provisions which * * * become contracts * * * within the protection of the [Contract Clause]." The legislative history associated with the enactment of the 1962 covenant as well as the statutory language used establish fairly conclusively that the Legislature intended the covenant to be a contract between the states and the bondholders of the Authority.

1970), aff'd 58 *N. J.* 432 (1971); *First Nat'l Bank of Boston v. Main Tpke. Auth.,* 153 *Me.* 131, 136 *A.* 2d 699 (Sup. Jud. Ct. 1957).

[4] The Contract Clause addresses itself not only to the obligation, but also to the remedy and the security furnished to enforce the obligation and assure its performance. The first expression of this view of the Contract Clause occurs in *Green v. Biddle,* 21 *U. S.* (8 *Wheat.*) 1, 5 L. Ed. 547 (1823), which arose out of a compact between Virginia and Kentucky creating the latter as a separate state. Under the terms of the compact Kentucky agreed that all private rights and land titles derived from the laws of Virginia would "remain valid and secure" under Kentucky law. Thereafter, Kentucky enacted a series of laws designed to diminish and impede the remedies available to Virginia claimants to recover possession and the rents and profits of lands occupied by Kentucky residents. In holding the legislation invalid under the Contract Clause, Justice Story said:

> It is no answer that acts of Kentucky, now in question, are regulations of the remedy, and not of the right to lands. If those acts so change the nature and extent of existing remedies, as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they directly overturned his rights and interests." [21 *U. S.* (8 *Wheat.*) at 17].[39]

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[39]Upon rehearing in *Green v. Biddle,* Justice Washington delivered the opinion of the court containing perhaps the most extreme expression of the reach of the Contract Clause rendered by the court:

> The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing, or accelerating, the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however, minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. [21 *U. S.* (8 *Wheat.*) at 8488]

In contrast to the language of Justice Story quoted in the text above, Justice Washington states that *any* impairment, whether or not material to the obligation, violates the Contract Clause. It is

In *Von Hoffman v. City of Quincy, supra,* bonds were issued by a city under existing Illinois law which authorized a special property tax to be levied in an amount sufficient to pay the interest on the bonds. The taxes thus collected were to be held in a separate fund specially pledged for the payment of the interest and not to be used for any other purpose. Subsequently, the legislature enacted a statute which limited the rate of property tax that could be levied by municipalities, and repealed the prior law authorizing the levy of a special tax for the benefit of bondholders. The property taxes collected by the city under the new law were insufficient to pay the interest due on the bonds. A bondholder instituted suit against the city and judgment was entered in his favor for the amount of interest owed on the bonds. The city failed to pay the judgment and refused to levy a property tax for such purpose. The judgment creditor thereupon sought a writ of *mandamus* to compel the city to pay the judgment or to levy a special tax. In its defense the city relied upon the repeal legislation as constituting a valid exercise of the state's sovereign power with respect to future public revenues, as to which it urged no binding contract could exist.[40] The court held the repeal legislation to be an invalid impairment under the Contract Clause. The court reaffirmed the doctrine laid down by Justice Story in *Green v. Biddle, supra,* this time describing the prohibited area in terms of an impairment of "substantial" rights, rather than a "material" impairment.

It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy,

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doubtful whether this view was ever embraced by the court at any time. But see *Planters' Bank of Miss. v. Sharp,* 47 *U. S.* (6 *How.*) 301, 327, 12 L. Ed. 447 (1848); *Ogden v. Saunders,* 25 *U. S.* (12 *Wheat.*) 213, 256, 6 L. Ed. 606 (1827).

[40]The Supreme Court had earlier rejected this argument in a different context. See *New Jersey v. Wilson,* 11 *U. S.* (7 *Cranch.*) 164, 3 L. Ed. 303 (1812).

which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced, the Act is within the prohibition of the Constitution, and to that extent void. [71 *U. S.* at 553].

In its analysis of the issue presented the court viewed the question as addressing itself to the impairment of a remedy. However, the "remedy" in this context is actually the security furnished for the payment of the obligation, *i. e.,* the authorization to levy a special property tax to pay the interest on the bonds.

This line of authority culminates in *W. B. Worthen Co. v. Kavanaugh, supra,* one of the last adjudications by the Supreme Court declaring repeal or amendatory legislation invalid under the Contract Clause. In *Kavanaugh* bonds had been issued by a municipal improvement district organized under the laws of Arkansas. At the time of issuance the statutory scheme to secure payment of the bonds provided for mortgage benefit assessments to be made against each parcel of property which "contained provisions well planned to make these benefit assessments an acceptable security." 295 *U. S.* at 57, 55 S. Ct. at 555. Thereafter, the legislature amended the statute so as to modify the procedures relative to defaulted obligations. The interest and penalties payable on default were substantially reduced, the time in which the property was to be sold for nonpayment was extended from 65 days to 2½ years, and the property owner was permitted to remain in possession with a right of redemption for a further period of four years without accounting for rents. The court struck down the subsequent legislation under the Contract Clause and in the course of doing so it gave a more precise definition of what constitutes a prohibited impairment. Speaking for the court Justice Cardozo said:

In the books there is much talk about distinctions between changes of the substance of the contract and changes of the remedy. * * * The dividing line is at times obscure. There is no need for the

purposes of this case to plot it on the legal map. Not even changes of the remedy may be pressed so far as to cut down the security of a mortgage without moderation or reason or in a spirit of oppression. Even when the public welfare is invoked as an excuse, these bounds must be respected. * * * We state the outermost limits only. In stating them we do not exclude the possibility that the bounds are even narrower. The case does not call for definition more precise. A catalogue of the changes imposed upon this mortgage must lead to the conviction that the framers of the amendments have put restraint aside. With studied indifference to the interests of the mortgagee or to his appropriate protection they have taken from the mortgage the quality of an acceptable investment for a rational investor.

* * * * * * * *

Whether one or more of the changes effected by these statutes would be reasonable and valid if separated from the others, there is no occasion to consider. A state is free to regulate the procedure in its courts even with reference to contracts already made * * * and moderate extensions of the time for pleading or for trial will ordinarily fall within the power so reserved. A different situation is presented when extensions are so piled up as to make the remedy a shadow. * * * What controls our judgment at such times is the underlying reality rather than the form or label. The changes of remedy now challenged as invalid are to be viewed in combination, with the cumulative significance that each imparts to all. So viewed they are seen to be an oppressive and unnecessary destruction of nearly all the incidents that give attractiveness and value to collateral security. [295 *U. S.* at 60, 62, 55 S. Ct. at 557].

[5, 6] As the language of the court in the cases cited above makes manifest, not every impairment of a contract obligation or security for its performance runs afoul of the Contract Clause; a state acting under its reserved police powers may alter its remedial processes and thereby diminish contractual security provided it does not destroy its quality as "an acceptable investment for a rational investor." This view of the Contract Clause has its origin in the concurring opinion of Justice Johnson in *Fletcher v. Peck,* 10 *U. S.* (6 *Cranch*) 87, 145, 3 *L. Ed.* 162 (1810). See *Hale, supra* at 873. Justice Johnson's conception of the states' reserved power under the Contract Clause was cogently expressed in his dissenting opinion in *Ogden v. Saunders,* 25 *U. S.* (12 *Wheat.*) 213, 6 L. Ed. 606 (1827), where he said:

Societies exercise a positive control as well over the inception, construction, and fulfillment of contracts, as over the form and measure of the remedy to enforce them.

* * * * * * * *

It is, therefore, far from being true, as a general proposition, "that a government necessarily violates the obligation of a contract which it puts an end to without performance." It is the motive, the policy, the object, that must characterize the legislative act, to affect it with the imputation of violating the obligation of contracts. [25 *U. S.* (12 *Wheat.*) at 286, 291.]

[7] Justice Johnson's formulation of the police power doctrine as applied to the Contract Clause was quoted with approval and forms the rationale for the court's decision in *Home B. & L. Ass'n v. Blaisdell,* 290 *U. S.* 398, 428-429, 54 S. Ct. 231, 78 L. Ed. 413 (1933). During the span of more than a century between *Ogden v. Saunders* and *Blaisdell* the court had held on numerous occasions that the states retained the power to impair contractual obligations — including those to which the state was a party — in the exercise of their always reserved police powers to act in the interest of the public health, safety and general welfare.[41] First in dictum, *Boyd v. Alabama,* 94 *U. S.* 645, 650, 24 L. Ed. 302 (1877), and then by direct application of the doctrine, the court held that a lottery franchise granted for a definite term of years could be repealed. *Stone v. Mississippi,* 101 *U. S.* 814, 25 L. Ed. 1079 (1880); *Douglas v. Kentucky,* 168 *U. S.* 488, 18 S. Ct. 199, 42 L. Ed. 553 (1897). In *Northwestern Fertilizing Co. v. Hyde Park,* 97 *U. S.* 659, 24 L. Ed. 1036 (1878), it was held that a franchise to operate a fertilizer factory at a given location could be negated by the exercise of the police power to abate a nuisance. Similarly, the power to control the use of the public streets may not be bargained away, *Atlantic Coast Line R. Co. v. Goldsboro,* 232 *U. S.* 548, 34

[41] For a more detailed discussion of the development of the doctrine, see *Wright, The Contract Clause and the Constitution,* 196-213 (1938).

S. Ct. 364, 58 L. Ed. 721 (1914); *Denver & Rio Grande R. Co. v. Denver,* 250 *U. S.* 241, 39 S. Ct. 450, 63 L. Ed. 958 (1919), nor can the state contractually bind itself not to exercise its power of eminent domain, *West River Bridge Co. v. Dix,* 47 *U. S.* (6 How.) 507, 12 L. Ed. 535 (1848); *Pennsylvania Hospital v. Philadelphia,* 245 *U. S.* 20, 38 S. Ct. 35, 62 L. Ed. 124 (1917), or to change the location of its governmental subdivisions, *Newton v. Mahoning County,* 100 *U. S.* 548, 25 L. Ed. 710 (1880). The broadest expression of this view of the police power during this period is to be found in *Chicago & Alton R. R. v. Tranbarger,* 238 *U. S.* 67, 35 S. Ct. 678, 59 L. Ed. 1204 (1915), where Justice Pitney said:

> It is established by repeated decisions of this court that neither of these provisions of the Federal Constitution [the Contract and Due Process Clauses] has the effect of overriding the power of the state to establish all regulations reasonably necessary to secure the health, safety, or general welfare of the community; that this power can neither be abdicated nor bargained away and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise * * *. And it is also settled that the police power embraces regulations designed to promote the public convenience or the general welfare and prosperity, as well as those in the interest of public health, morals or safety. [238 *U. S.* at 76–77, 35 S. Ct. at 682]

The issue before the court in *Blaisdell* was the validity of the Minnesota Mortgage Moratorium Law. Once again the question was whether the state could exercise its sovereign power to impair the security provisions for the payment of a debt by a significant alteration of the remedies available for its enforcement. The act provided that during the economic emergency declared to exist, the state courts could upon application and notice extend the period of redemption from foreclosure sales and fix the rental value to be paid by the mortgagor in possession. The act also barred any action for a deficiency judgment until after the expiration of the redemption period. The court upheld the constitutionality of the act, and Chief Justice Charles Evans Hughes described the reach of the Contract Clause:

> To ascertain the scope of the constitutional prohibition, we examine the course of judicial decisions in its application. These put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula.
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> * * * * * * * *
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> Not only is the constitutional provision qualified by the measure of control which the state retains over remedial processes, but the state also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end "has the result of modifying or abrogating contracts already in effect." *Stephenson v. Binford,* 287 *U. S.* 251, 276, 53 *S. Ct.* 181, 189, 77 *L. Ed.* 288. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while, — a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court. [290 *U. S.* at 428, 434–5, 54 S. Ct. at 236]

[8–10] The line of demarcation between *Blaisdell* and *Kavanaugh* may be expressed as one of degree: The states' inherent power to protect the public welfare may be validly exercised under the Contract Clause even if it impairs a contractual obligation so long as it does not destroy it. While Blaisdell placed great emphasis upon the emergency character of the Minnesota law to validate the action taken, decisions of the court since then have sanctioned nonemergent legislation impairing contractual rights and remedies where necessary to protect the economic well being of the state. See *Veix v. Sixth Ward B. & L. Ass'n of Newark,* 310 *U. S.* 32, 60 S. Ct. 792, 84 L. Ed. 1061 (1940); *Gelfert v. National City Bank,* 313 *U. S.* 221, 61 S. Ct. 898, 85 L. Ed. 1299 (1941). Furthermore, in keeping with the principles set forth in *Kavanaugh,* we must deal with realities and not abstractions, for "[t]he Constitution is 'in-

tended to preserve practical and substantial rights, not to maintain theories.'" *Faitoute Iron & Steel Co. v. City of Asbury Park,* 316 *U. S.* 502, 514, 62 S. Ct. 1129, 1133, 86 L. Ed. 1629 (1942).

The most recent case dealing with the issue, and that upon which defendants place greatest reliance, is *City of El Paso v. Simmons,* 379 *U. S.* 497, 85 S. Ct. 577, 13 L. Ed. 2d 446, reh. den. 380 *U. S.* 926, 85 S. Ct. 879, 13 L. Ed. 2d 813 (1965). The facts of the case may be briefly summarized. Texas law had provided for the sale of public lands on easy credit terms to raise money for school funds and to encourage land settlement. The credit terms set forth in the law governing such sales included a provision permitting the contract owner, were the land forfeited back to the State for nonpayment of interest, an unlimited time in which to reinstate the contract by payment of back interest, subject only to the rights of intervening third persons. In 1941, after a history of land title disputes and rampant speculation in such lands, Texas limited the right of reinstatement to five years. Upon expiration of this five-year period the State would have clear title. Simmons, owner of a quitclaim deed to land contracted for in 1910, had not made timely payment of the interest arrearages. His contract title was forfeited by the state which subsequently transferred the land to the City of El Paso. He instituted suit against the city to determine title to the land, urging that the 1941 law was a violation of the Contract Clause since it not only impaired his contractual right of reinstatement but destroyed it completely.

The 1941 legislation was held by the court to constitute a valid exercise of the state's power to modify or affect the obligation of its contracts. The essential question, in the court's view, was not whether the statute impaired the "obligation" or the "remedy", for not "every modification of a contractual promise * * * [or] every alteration of existing remedies * * * violates the Contract Clause." 379

U. S. at 506–507, 85 S. Ct. at 582. Rather, the question was whether the modification of the contractual obligation to reinstate the purchaser's title was reasonable on the facts disclosed. Citing the legislative history, the court noted that Texas had a vital interest in "the integrity of land titles" and in the administration "of its property in a businesslike manner" (379 *U. S.* at 511–12, 85 S. Ct. at 585) and

> * * * [t]he Contract Clause of the Constitution does not render Texas powerless to take effective and necessary measures to deal with [these matters]. * * * [T]he promise of reinstatement, whether deemed remedial or substantive, was not the central undertaking of the seller nor the primary consideration for the buyer's undertaking. * * * We do not believe that it can seriously be contended that the buyer was substantially induced to enter into these contracts on the basis of a defensible [*sic*] right to reinstatement in case of his failure to perform * * *. We, like the Court in *Faitoute Iron & Steel Co. v. City of Asbury Park*, 316 *U. S.* 502, 514, 62 *S. Ct.* 1129, 1135, 86 *L. Ed.* 1629, believe that "[t]he Constitution is 'intended to preserve practical and substantial rights, not to maintain theories.' * * *." 379 *U. S.* at 513–515, 85 S. Ct. at 586.
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> The measure taken to induce defaulting purchasers to comply with their contracts * * * was a mild one, indeed, hardly burdensome to the purchaser who wanted to adhere to his contract of purchase, but nonetheless an important one to the State's interest. The Contract Clause does not forbid such a measure. [379 *U. S.* at 516–517, 85 S. Ct. at 588]

The view of the Contract Clause and its subservience to the police power as expressed in *Blaisdell* and *El Paso* coincides with the interpretation placed upon the Contract Clause of the New Jersey Constitution as interpreted by our highest courts. Thus, in *Hourigan v. North Bergen Tp.,* 113 *N. J. L.* 143 (E. & A. 1934), Justice Heher cited *Blaisdell* with approval for the proposition that "the reservation of essential attributes of sovereign power" is to be read into the contracts of the State. He there defined the police power as

> * * * an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people and [it] is paramount to any rights under contracts between individuals. While this power is subject to limitations in certain cases, there is a wide discretion on the part of the legislature in determining what is and what is not necessary — a discretion which courts ordinarily will not interfere with. [at 149]

[11] Neither *New Jersey Highway Auth. v. Sills, supra,* nor *New Jersey Sports & Expos. Auth. v. McCrane,* 61 *N. J.* 1 (1972), app. dism. 409 *U. S.* 943, 93 S. Ct. 270, 34 L. Ed. 2d 215 (1972), suggests that our present Supreme Court has adopted a narrower interpretation of the Contract Clause of either the State or the Federal Constitutions. In *Sills* the court viewed a statute exempting National Guardsmen from the payment of tolls on the Parkway as "ordinary and relatively unimportant legislation" not intended to deal with "any problem of state-wide importance" as was the case in *El Paso* (111 *N. J. Super.* at 320). And in *McCrane* the Supreme Court expressly affirmed that while a contract between the State and the bondholders of an independent governmental authority is entitled to protection under the State and Federal Constitutions, such contracts are nevertheless subject to "a proper exercise of the State's never abdicated police powers." 61 *N. J.* at 26.[42]

[12] The history of the creation and evolution of the Port Authority establishes beyond peradventure that it was intended by the states and by the Congress to perform govern-

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[42] In their brief and at oral argument defendants ask the court to pass upon the validity of the New York repeal act under the New York Constitution. While it would unquestionably be desirable to do so in the interest of resolving all issues within the context of this litigation, that question should be left to the New York courts for decision. *Cf. Interstate Wrecking Co. v. Palisades Interstate Park Comm'n,* 57 *N. J.* 342, 352 (1971). It may be noted that U. S. Trust has filed a declaratory judgment action in the New York Supreme Court which is presently pending.

mental functions necessary and vital to the public safety, health and welfare of the citizens of the two states and the nation as well. *Cf. Comm'r of Int. Rev. v. Ten Eyck,* 76 *F.* 2d 515, 518 (2 Cir. 1935). The states have a continuing interest in and can never abdicate their sovereign powers to control and direct the activities of the Authority to meet the everchanging needs of a complex society. See *Blaisdell, supra,* 290 U. S. at 442, 54 S. Ct. 231. Senator Farley summed it up when he advised Commissioner Kellogg in 1961:

> * * * I appreciate that if the Legislature directs you to enter into a contract involving the issuance of bonds, there will be no impairment of obligations of contract, but I must call to your attention and the members of your Commission that one Legislature cannot bind a subsequent Legislature involving policy. If, perchance, may I illustrate — ten, fifteen, twenty years from now the respective legislatures of New York and New Jersey importune your Port Authority Commission to do something in addition involving public service, one legislature cannot bind another involving policy. [*Supra* at 157]

The interest of the states in the development of a coordinated system of public and private transportation within the Port District has been spread on the public record for more than 50 years, and legislative action to accomplish that objective clearly involves an exercise by the states of their fundamental sovereign powers. The enactment of the 1962 covenant was indeed an attempt to satisfy an immediate public need to preserve the H&M as a viable public transportation system. The passage of time and events between 1962 and 1974 satisfied the Legislatures of the two states that the public interest which the Port Authority was intended to serve could not be met within the terms of the covenant.

[13, 14] The events which occurred between the passage of the covenant and its repeal are described elsewhere in this opinion (*supra* at 167–176) and need not be detailed again. Suffice it to say that between 1962 and 1974 the security afforded bondholders had been substantially augmented by a vast increase in Authority revenues and reserves, and the Authority's financial ability to absorb greater deficits, from

whatever source and without any significant impairment of bondholder security, was correspondingly increased.[43] During the same interval mass transit facilities within the District continued to deteriorate while the public need for such facilities became unprecedented as the result of the promulgation of stringent federal air pollution regulations designed to reduce automobile usage and the emergence of an energy crisis which threatened the entire system of private automobile transportation in the two States.[44]

"The motive, the policy [and] the object" of the repeal legislation, read against its background, was to further a vital interest of the states which their Legislatures deemed to be essential to the public good. The question is whether the exercise of such power falls within the prohibited scope fo the Contract Clause, or does it, in the language of Chief Justice Hughes in *Blaisdell,* represent "a rational compromise between the individual rights and the public welfare." 290 *U. S.* at 442, 54 S. Ct. at 241.

Conceding the existence of some impairment of bondholder security as a result of the repeal, has the action of

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[43]Between 1961 and 1973 the net revenues of the Authority increased from $68,000,000 to $137,000,000, and over that period the Authority had available to it $582,732,000 in excess of its debt service requirements, after taking into account the deficits of the H&M. Through 1974, the corresponding figures are $161,283,000 and $649,750,000, respectively.

[44]Plaintiff urges that none of the legislative history (detailed at 167–176, *supra*) which preceded the repeal of the covenant should be considered relevant to the question of whether the repeal constituted a reasonable exercise of the states' police powers inasmuch as the repeal legislation was unnecessary and the Legislature made no findings or declarations with respect to such matters. A judgment as to the necessity of the legislation is for the Legislature and not the courts. See *Hourigan v. North Bergen Tp., supra* 113 *N. J. L.* at 149. Nor is the Legislature required to make explicit findings and declarations within the context of the legislation to support an exercise of the police power. See *Gelfert v. Nat'l. City Bank of N. Y., supra* 313 *U. S.* at 235, 61 S. Ct. 898; *Bucsi v. Longworth B. & L. Ass'n,* 119 *N. J. L.* 120, 122 (E. & A. 1937), app. dism. 305 *U. S.* 665, 59 S. Ct. 154, 83 L. Ed. 431 (1938).

the states destroyed the quality of their security as an "acceptable investment for a rational investor"? The repeal, of course, leaves intact the provisions of the CBR and the series resolutions which now constitute, together with the General Reserve Fund Act, the same measure of the bondholders' contractual security rights as existed prior to the enactment of the covenant in 1962. Presumably, rational investors—including plaintiff—purchased hundreds of millions of dollars of consolidated bonds prior to 1962, without the additional security afforded by the covenant and with full knowledge of the power of the states to direct the Authority into mass transit operations. The two principal bond rating services, upon whose judgment the financial community places great reliance, rated the consolidated bonds—minus the covenant—as securities as to which no default was anticipated.

The claim that bondholder security has been materially impaired or destroyed by the repeal is simply not supported by the record. The pledge of the Authority's net revenues and reserves remains intact; the Authority will still be barred from the issuance of any new consolidated bonds unless the 1.3 test required by the CBR is met, and the Authority will continue to be prohibited from the issuance of any consolidated bonds or other bonds secured by a pledge of the general reserve fund without the certification required by section 7 of the series resolutions, to wit, that in the opinion of the Authority the estimated expenditures in connection with any additional facility for which such bonds are to be issued would not, for the ensuing ten years, impair the sound credit standing of the Authority, the investment status of its consolidated bonds, or the Authority's obligations to its consolidated bondholders.

[15] Plaintiff's claim of an unconstitutional impairment is predicated upon such slender reeds as the assertion that the "quality" of the certification required under the CBR and section 7 need not be as "objective" as that required under the covenant; the speculation that the good judgment of the Authority's commissioners in making the necessary

certifications will be overborn by the "political pressures" exerted by the Governors of the States,[45] and the self-flagellating prospect that the states will conspire to "give" the New York City subway system to the Authority and thereby destroy not only the bondholders' security but the Port Authority as well. But as the court stressed in *Faitoute, supra,* constitutional questions must be decided in the world of reality and not by resort to abstract speculations of the kind offered by plaintiff.

[16, 17] The thrust of plaintiff's argument is that any impairment of the security provisions of a contract violates the Contract Clause. It seeks to recreate a theory of the Contract Clause which, if ever imbedded in our constitutional law, no longer exists. As reflected in the course of more than 150 years of its judicial interpretation, the Contract Clause must be construed in harmony with the power of the states to alter or modify their contractual obligations where an important public interest requires. Those who enter into contractual relations with the sovereign, including the bondholders of the Port Authority, are chargeable with the knowledge that it is a sovereign entity with which they are dealing and that "the reservation of [the] essential attributes of sovereign power" is as much a part of their contract as that which is expressly stated.

[18] It is the judgment of this court that the repeal legislation was a reasonable and hence valid exercise of the states' police power which is not prohibited by the Contract Clause of either the Federal or the State Constitution. An order will therefore be entered dismissing the complaint of plaintiff and in favor of defendants on so much of their counterclaim as seeks a declaratory judgment with respect to the constitutional validity of *chapter* 25 of the *Laws of* 1974.

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[45]At the same time plaintiff argues that the covenant's requirement of a certification by the Governors is an "added" protection afforded them by the covenant.

In view of the court's holding in the U. S. Trust action, defendant's third separate defense (asserting the invalidity of the 1962 covenant) and the complaint in the *Gaby* action will be dismissed. See *Wagner v. Ligham,* 37 *N. J. Super.* 430 (App. Div. 1955).

Judgment

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION — BERGEN COUNTY

UNITED STATES TRUST COMPANY OF NEW YORK, etc.,
Plaintiff,

v.

THE STATE OF NEW JERSEY, et als.,
Defendants.

DANIEL M. GABY,
Plaintiff,

v.

THE PORT OF NEW YORK AUTHORITY, et al.,
Defendants.

THE COURT having rendered its written opinion on May 14, 1975, it is, for the reasons stated therein,

ORDERED, ADJUDGED and DECREED:

1. The complaint in *United States Trust Company of New York, etc.* v. *The State of New Jersey, et als.*, Docket No. L-26861-73 ("the U.S. Trust action"), is hereby dismissed;

2. Judgment is hereby entered in favor of the defendants in the U.S. Trust action on so much of their counterclaim as seeks a declaratory judgment with respect to the constitutional validity of chapter 25 of the Laws of New Jersey 1974;

Judgment

3. Chapter 25 of the Laws of New Jersey 1974 is hereby declared valid and constitutional in all respects;

4. In view of the Court's holding in the U.S. Trust action, the defendants' third separate defense in that action and the complaint in *Daniel M. Gaby* v. *The Port of New York Authority,* Docket No. L-26462-71, are hereby dismissed.

Dated: May 29, 1975.

GEORGE B. GELMAN,
J.S.C.

[Consents to form omitted in printing.]

Decision of the Supreme Court of New Jersey

UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE FOR THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY CONSOLIDATED BONDS, FORTIETH AND FORTY-FIRST SERIES; ON ITS OWN BEHALF AND ON BEHALF OF ALL HOLDERS OF CONSOLIDATED BONDS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND ALL OTHERS SIMILARLY SITUATED, PLAINTIFF-APPELLANT-CROSS-RESPONDENT, v. THE STATE OF NEW JERSEY; BRENDAN T. BYRNE, GOVERNOR OF THE STATE OF NEW JERSEY; AND WILLIAM F. HYLAND, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, DEFENDANTS-RESPONDENTS-CROSS-APPELLANTS.

DANIEL M. GABY, PLAINTIFF-CROSS-APPELLANT, v. THE PORT OF NEW YORK AUTHORITY, JAMES C. KELLOGG, III, HOYT AMMIDON, GUSTAVE L. LEVY, JAMES G. HELLMUTH, ANDREW C. AXTELL, WILLIAM J. RONAN, W. PAUL STILLMAN, WALTER H. JONES, BERNARD J. LASKER, PHILIP B. HOFFMAN, AND JERRY FINKELSTEIN, COMMISSIONERS OF THE PORT OF NEW YORK AUTHORITY, AUSTIN J. TOBIN, EXECUTIVE DIRECTOR OF THE PORT OF NEW YORK AUTHORITY, AND WILLIAM T. CAHILL, GOVERNOR OF THE STATE OF NEW JERSEY, DEFENDANTS-CROSS-RESPONDENTS, AND UNITED STATES TRUST COMPANY OF NEW YORK, ETC., INTERVENOR.

Argued October 7, 1975—Decided February 25, 1976.

SYNOPSIS

Class action on behalf of citizens, residents and taxpayers whose occupations were dependent upon the existence of mass transportation was brought against Port Authority of New York and New Jersey challenging constitutionality of covenant between the States of New Jersey and New York on one hand and the holders of bonds issued by the Port Authority on the other hand with respect to the use to which certain revenues were to be put. After the covenant was repealed by New Jersey Legislature, trustee for the bonds brought action challenging the constitutionality of the repealing statute. The Superior Court, Law Division, 134 *N. J. Super.* 124, upheld the constitutionality of the repealer and dismissed the class action and the parties appealed. The Supreme Court held that compact which created the Port Authority empowered, but did not mandate, the Authority to develop a plan for a particular kind of method of transportation; and that, since the Authority had exercised its discretion by rejecting a policy favoring mass transportation, mandamus did not lie to compel the Authority to develop a plan for mass transit even though, by virtue of repeal of the covenant, it had the funds to do so.

Affirmed.

Pashman, J., concurred in part and dissented in part and filed an opinion.

Mr. Robert B. Meyner and *Mr. Devereux Milburn*, of the New York bar, argued the cause for appellant-cross-respondent-intervenor United States Trust Company (*Messrs. Meyner, Landis and Verdon*, and *Messrs. Carter, Ledyard and Milburn* and *Hawkins, Delafield and Wood*, of the New York bar, attorneys; *Mr. Meyner, Mr. Milburn*, and *Mr. Donald J. Robinson*, of the New York bar, on the brief and of counsel).

Mr. Murray J. Laulicht and *Mr. Michael I. Sovern*, of the New York bar, Special Counsel to the Attorney General, argued the cause for respondents-cross-appellants State of New Jersey, Brendan T. Byrne and William F. Hyland (*Mr. William F. Hyland*, Attorney General of New Jersey, attorney; *Mr. Laulicht, Mr. Sovern* and *Mr. Harold Edgar*, of the New York bar, Special Counsel to the Attorney General, on the brief).

Mr. Howard Stern argued the cause for plaintiff-cross-appellant Daniel M. Gaby (*Messrs. Shavick, Stern, Schotz, Steiger and Croland*, attorneys; *Mr. Stern* on the brief. *Mr. Stern* and *Mr. Theodore W. Kheel* of the New York bar and *Messrs. Battle, Fowler, Stokes and Kheel* of the New York bar, of counsel).

Mr. Francis A. Mulhern argued the cause for cross-respondent The Port Authority of New York and New Jersey, et al. (*Mr. Mulhern*, attorney and on the brief; *Mr. Patrick J. Falvey* of the New York bar, *Mr. Joseph Lesser* of the New York bar, *Ms. Isobel E. Muirhead, Mr. Arthur P. Berg* of the New York bar, and *Mr. Vigdor D. Bernstein*, of counsel).

PER CURIAM. The judgment is affirmed, substantially for the reasons set forth in the opinion of Judge Gelman, 134 *N. J. Super.* 124 (Law Div. 1975). The observations which follow are occasioned by Justice Pashman's suggested remedy in the Gaby suit.[1]

Whatever persuasive force might be accorded the argument that as a matter of policy the Port Authority should devote more of its energies and resources to the mass transit field, the fact remains that the remedy fashioned by our Brother is neither pressed for by Gaby on this appeal nor within the powers of this Court to direct and enforce.

Gaby's class action complaint for a declaratory judgment that the 1962 Covenant was unconstitutional asked for "multifarious relief," including a request that the Port Authority be directed "to formulate and submit to the court a plan for the development of mass transit facilities within the Port District," 134 *N. J. Super.* at 131. However, the trial judge, having concluded in the *United States Trust Co.* suit that "the repeal legislation was a reasonable and hence valid exercise of the states' police power which is not prohibited by the Contract Clause of either the Federal or the State Constitution," *id.* at 197, found it unnecessary to reach the issue of the 1962 Covenant's asserted invalidity. He therefore dis-

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[1]Justice Pashman would order the Port Authority to complete pending projects and to "formulate and present plans and suggestions for a regional mass transportation scheme to the Legislatures of New York and New Jersey * * * in an expeditious fashion and within a fixed period of time." *Post* at 288.

missed Gaby's complaint, *id.* at 198, without discussing the requested relief of a direction for development of a mass transit plan, on which issue there was neither testimony nor argument at the trial level.

In his brief filed in the Court after direct certification of his appeal, 68 *N. J.* 175 (1975), Gaby conceded his limited purpose in pursuing the appeal as being "to preserve the issue of the constitutionality of the 1962 Covenant." The point of this in turn was, as he put it, to furnish "an alternative ground for affirming the decision below."[2] Whatever issues may have been preserved by his appeal and whatever desire there may have been to present "all the issues," the fact remains that Gaby's brief raises and discusses only the validity of the Covenant in constitutional terms. No argument is made there for any special relief; and, understandably, the Port Authority has likewise not briefed the question at all in this Court. At oral argument the subject was adverted to only in a limited fashion.

Ordinarily, we would have no occasion to decide an issue which, while portentous in itself, has become so remote and peripheral to the central thrust of this litigation. However, inasmuch as the minority opinion raises and discusses *in extenso* this question of considerable public significance, namely, the involvement of the Port Authority in mass transit and particularly the propriety of this Court ordering as a specific remedy the submission of a plan for development of mass transit facilities, we overlook whatever infirmities may exist in the record before us, compounded by the practical disadvantage of not having the views of the parties, and proceed to address the point.

[1] The 1921 Compact between the States of New York and New Jersey, whereby the Port Authority was created, *N. J. S. A.* 32:1–4, envisioned the adoption of a Comprehensive Plan for the development of the port. *N. J. S. A.*

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[2]Cross Motion for Certification of Plaintiff-Respondent, Daniel M. Gaby.

32:1–11. Direction was given to the Port Authority in the Plan itself "to proceed with the development of the port of New York in accordance with said comprehensive plan * * *." *N. J. S. A.* 32:1–33. That the Authority's involvement in transportation matters was contemplated is obvious from a reading of this and other portions of the Comprehensive Plan as well as of the Compact; but it requires a quantum leap to derive therefrom a mandate (as distinguished from the power) to develop a plan for a particular kind or method of transportation, to wit, mass transit. It is not without significance, for instance, that the legislature has provided that the Authority *may* make recommendations for the increase and improvement of transportation facilities, *N. J. S. A.* 32:1–13, which by definition includes railroads and any facility for the "transportation or carriage of persons or property," *N. J. S. A.* 32:1–23; but nowhere is it mandated that such recommendations be made. A mandate such as that contemplated by the minority opinion is not something to be inferred by the courts but rather is a singularly appropriate subject for specific legislative directive, conspicuously absent here. *Cf. Del. Riv. & Bay Auth. v. N. J. Pub. Emp. Rel. Comm'n.*, 112 *N. J. Super.* 160, 165 (App. Div. 1970), aff'd o. b., 58 *N. J.* 388 (1971).

If, then, the Authority is in the position of being empowered (as we acknowledge) rather than mandated to act in the area of mass transit, its exercise of that power becomes a matter of discretion and judgment. As is made abundantly clear by the voluminous record in this case, the trial court's opinion, and the concurring and partially dissenting opinion here, the Authority has more than once in recent years broached the question of whether it should pursue a policy of encouraging mass transit and has determined that it shall not. The remedy suggested in the minority opinion is designed to overrule that decision. As such it is in the nature of the former prerogative writ of *mandamus*, now invocable under proceedings for relief in lieu of prerogative writs, *Rule* 4:69.

[2, 3] However, *mandamus* will not lie if the duty to act is a discretionary one and the discretion has been exercised. As Justice Heher explained, in *Switz v. Middletown Twp.*, 23 *N. J.* 580 (1957), *mandamus* is "a coercive process that commands the performance of a specific ministerial act or duty, or compels the exercise of a discretionary function, but does not seek to interfere with or control the mode and manner of its exercise or to influence or direct a particular result." 23 *N. J.* at 587. As we have sought to demonstrate, the circumstances before us do not at all invite or accommodate the remedy proposed. This is so because the Authority (whose function is clearly not ministerial) has in fact exercised its discretion, even though that exercise has resulted in the rejection of a policy favoring mass transportation. Being a judgment decision its wisdom may be open to dispute; but as to the propriety of this Court's refusal to intrude on the underlying policy determination, there can be no question in the circumstances before us. And this not as a response to some procedural deficiency but because of our respect for the fundamental substantive principle embodied in *mandamus*.

Finally, we observe that in this particular area of bi-state operations, there is close and continuing supervision of the Port Authority by the other branches of government. Hence, the proposed remedy would not only tend to usurp the influence over the Authority vested in the Governors of the States of New York and New Jersey, but would also intrude upon the functions of the legislatures of the respective States, whose task it is in the final analysis to enact appropriate legislation and take such other action as may be required to remedy whatever deficiencies may exist with respect to mass transit.

Affirmed.

PASHMAN, J. (concurring in part and dissenting in part).

I

INTRODUCTION TO GABY COMPLAINT

My Brothers today affirm a lower court decision which was the product of two separate and distinct actions consolidated for trial. *United States Trust Co. v. State*, 134 *N. J. Super.* 124 (Law Div. 1975). In the first action, brought by plaintiff United States Trust Company, the trial court sustained the State's repeal of the 1962 statutory covenant (*N. J. S. A.* 32:1–35.55) between the States of New Jersey and New York and the holders of bonds issued by the Port Authority of New York and New Jersey (Port Authority). That covenant was concurrently enacted by the legislatures of New York and New Jersey at the time of the Port Authority's acquisition of the Hudson & Manhattan Railroad Company (H & M), since renamed the Port Authority Trans-Hudson System (PATH). Intended as a means of protecting the bondholders' investments, the covenant prohibited the states and the Port Authority from applying "any of the rentals, tolls, fares, fees, charges, revenues or reserves, . . . for any railroad purposes whatsoever other than permitted purposes." *N. J. S. A.* 32:1–35.55. As subsequently defined in the covenant, "permitted purposes" precluded the establishment, acquisition or construction of any railroad facility until the Port Authority could determine that the facility would be self-supporting or would not produce deficits except within narrowly defined limits.

In dismissing plaintiff's cause of action, the trial court found that the 1974 "repealer," *N. J. S. A.* 32:1–35.55a, was immune from constitutional challenge as an impairment of contractual obligation, a right which is protected by *U. S. Const.*, Art. I, § X and *N. J. Const.* (1947), Art. IV, § VII, ¶ 3. As a collateral finding, the court determined that the attractiveness of Port Authority bonds was not contingent upon the continued protection of the 1962 covenant, but rather upon the viability of the Port Authority itself.

The majority affirms the trial court on these bases and to this extent, I concur fully and completely with the conclusions reached by Judge Gelman in his very enlightened and comprehensive opinion. My agreement is premised on the unduly restrictive influence which the covenant exerted on Port Authority operations in contravention of the statutory mandates upon which that agency was created in 1921. The paralytic effect of the covenant could be seen in the Authority's practical inability and attitudinal reluctance to respond to the mounting needs for rapid transit in the New York metropolitan area. In light of the limited utility which it continued to serve, the 1962 covenant represented an artificial obstacle to the affirmative public action which was necessitated as an alternative to continued and wasteful reliance solely on the private automobile as the primary mode of transportation.

The second action, *Gaby v. Port of New York Authority, et al.*, was likewise concerned with the repeal of the 1962 covenant. Expanded into a class action on behalf of citizens, residents and taxpayers whose occupations are dependent upon the existence of mass transportation, plaintiff cites the 1962 covenant as an impediment to the improvement and expansion of these facilities. While the State of New Jersey sought the repeal of the covenant as an ultimate end in the *United States Trust Co.* action, plaintiff Gaby visualizes a repeal as merely a means to a larger end. This is because the vindication of Gaby's interests is only partially dependent on freeing the financial resources from the restrictions of the 1962 covenant and placing them at the Port Authority's disposal. More problematical and essential to the relief which he desires is the necessity to overcome the administrative inertia which has characterized the agency's efforts in the area of mass transportation. Consequently, Gaby requested in his complaint that the trial court:

> **[D]irect and order the Port Authority, its Commissioners, and its Executive Director to formulate and submit to this Court, or a Special Master to be appointed by this Court, a plan for the development of mass transportation facilities in the Port District. [Plaintiff Gaby's complaint at 17]**

This action was pretried on February 22, 1973 and oral arguments were heard on September 26, 1973 on the parties' respective motions for summary judgment. Judgment was deferred and arguments were later rescheduled to permit the submission of briefs on additional issues and the intervention of United States Trust Company as a party defendant representing the interests of Port Authority bondholders. Prior to these arguments, the pendency of legislation repealing the covenant recommended that the trial court withhold further review. Accordingly, the proceedings were stayed to permit consideration of the anticipated legislation.

The statutory repealer which was signed into law by Governor Brendan T. Byrne on April 30, 1974 precipitated the *United States Trust Co.* action, which was instituted on the same day. On the basis of common subject matter, this later action was consolidated on December 10, 1974 with the previously filed *Gaby* case by order of the trial court. These matters then proceeded to trial in February 1975.

The trial was largely confined to the factual issues of bondholder reliance on the 1962 covenant and resultant damage to the secondary bond market caused by the repeal of the covenant. The information which was thus elicited formed the basis for the trial court's reported opinion, 134 *N. J. Super.* 124, in which the constitutionality of the 1974 repealer was sustained. Although reasons upon which the court's decision was grounded were clearly distinguishable from the constitutional arguments advanced by Gaby, the court's ultimate decision — the rejection of the 1962 covenant — coincided with Gaby's interests. Regardless of whether that result was achieved by sustaining the 1974 repealer as the trial court did, or whether it was achieved by finding the 1962 covenant itself unconstitutional as suggested by Gaby, the result indicated the possibility of granting the further relief sought by Gaby. A more activist role

for the Port Authority appeared to be a reality. Nonetheless, the court concurrently ordered the dismissal of Gaby's complaint, thus frustrating the additional relief which he sought. 134 *N. J. Super.* at 198. From this disposition, Gaby filed a cross-motion for direct certification which was granted on May 28, 1975. 68 *N. J.* 175 (1975).

Similar to his presentation before the trial court, Gaby's arguments are again directed towards a declaration of the unconstitutionality of the 1962 covenant. This is more the result of strategic considerations, however, than devotion to substantive principle. Recognizing the limited nature of the trial court's factual findings and disposition, Gaby has taken what appears to be a most advisable legal course. By preserving the issue of the constitutionality of the 1962 covenant on appeal, he has simultaneously preserved one of his major contentions should this or any other court reverse the trial court on the constitutionality of the 1974 repealer.

Furthermore, in his Supreme Court brief, Gaby explained that his contentions with regard to the 1962 Covenant are inextricably tied to his request for greater involvement of the Port Authority in mass transit projects:

> **The Appellant's Brief of Gaby is concerned with the validity of the 1962 Covenant (*N. J. S. A.* 32:1–35.50 *et seq.*). Central to the issue of the validity of the Covenant is the question whether the mass transportation of people within the Port District was one of the principal activities authorized by the Compact (*N. J. S. A.* 32:1–35.50 et seq.); whether the insulation of the Port Authority from that activity was in such derogation of the Compact as to frustrate its meaning and intent and so material as to require Congressional approval. [Plaintiff-Cross Appellant's brief at 3].**

The majority today chooses to overlook this relationship in its reluctance to transcend the judgmental confines of the trial court and in its affirmation of that court's dismissal of Gaby's complaint. This disposition, undertaken in an unusually cavalier fashion, is not a product of some misunderstanding as to the essential relief which Gaby requests. On the contrary, the majority recognizes the strategic considerations implicit in Gaby's desire to preserve the issue of the constitutionality of the 1962 Covenant. *Ante* (at 261). Nonetheless, in characterizing the constitutional arguments raised by Gaby as exemplifying a "limited purpose in pursuing the appeal," the majority misconstrues and frustrates the true interests of Gaby, and has done so in a manner which I find most distressing.

The majority justifies its truncated consideration of Gaby's plea by referring to an isolated phrase, taken out of context from a sentence which Gaby adopted as representative of his position in his cross-motion for certification. When more appropriately considered within the sentence in which it originally appeared, the phrase — "an alternative ground for affirming the decision below" — assumes an entirely different meaning from that which the majority attaches to it:

> **The purposes of this cross motion are identical with those stated by the State of New Jersey in its cross motion for certification: ". . . bring before the Supreme Court *all of the issues submitted to Judge Gelman* and to avoid the possibility that some of the issues submitted to Judge Gelman might have to be determined in the first instance by the Appellate Division. Because of the urgency and public importance of this case, it would be most unwise to require a piecemeal, appellate process, particularly since the [first] issue presented by this cross motion could be an alternative ground for affirming the decision below. . . ." [Plaintiff-cross appellant's appendix at 47a–48a; emphasis supplied].**

While the "first issue" refers to the constitutionality of the 1962 covenant, I believe it would be wrong to confuse Gaby's real interest in stimulating improvement of urban mass transportation with his more temporal interest in having the 1962 covenant declared unconstitutional. The majority not only fails to make this distinction, but fails to do so despite Gaby's expressed desire to present "all of the issues" to this Court.

This failure is only compounded by the majority's persistent willingness to ignore the Gaby complaint and the relief which it warrants. In spite of plaintiff's overindulgent concern for the constitutionality issue, the statement of his case reflects

more than a limited and perfunctory reference to the subject. During the course of oral argument, counsel for Gaby specifically stated:

> **Yes, as we read the compact between the states, the affirmative obligation of the Port Authority in this area is to plan. The immediate affirmative obligation . . . and indeed in these briefs and elsewhere, there is a suggestion that if the Covenant is invalid or the repealer upheld, either way, that it would be appropriate for the Court to direct the Port Authority to study mass transit needs in the Port Authority area and make proper proposals. Then when it comes to implementation, then you're talking about legislation of the two states, but the affirmative obligation of the Port Authority is to study the problem as it affects the Port area.**

It should be noted in passing, that this statement not only affirms the relief desired by plaintiff, but also embodies a request for a remedy which parallels that which I suggest below, *infra* at 287–288.

Therefore, although my Brothers remove the constricting fiscal shackles of the 1962 covenant, they fail to take the additional steps which flow as natural concomitants to the action which they affirm. This failure, as I see it, stems, in part, from a reluctance to go farther and faster in an area plagued by administrative inaction and intransigence. It also constitutes an indulgence in the meaningless gesture of sustaining the 1974 repealer without concurrently authorizing the relief needed to implement the initiative which the Legislature sought to instill in the Port Authority by that repeal.

As I fear, the administrative foot-dragging which was implicit in the 1962 covenant, may be only symptomatic of the inertia which has characterized the Port Authority in the field of mass transit operations. The majority's decision can only serve to perpetuate this sad state of affairs.

In light of the rapidly deteriorating condition of mass transit operations in the metropolitan area, this disposition is most unfortunate. Faced with the ever-increasing deficits which are inherent in this mode of public transportation, mass transit operations have been repeatedly shunned by the Port

Authority in spite of its statutory mandate to the contrary. As cutbacks in service have been experienced throughout the Port District, the commuters' resort to the private automobile has produced a dysfunctional volume of traffic congestion and pollution. The toll which this congestion has exacted has been obvious in the tunnels and on the bridges, whose operations the Port Authority apparently prefers to maintain.

Unlike today's majority, I am unwilling to assign plaintiff Gaby's case to death or to a peaceful somnambulism. This is particularly so where within the historical and evidential materials presented to the trial court reside the seeds for a more sweeping and effective disposition. I cannot sanction the mere repeal of the 1962 covenant without a concurrent assurance that the Port Authority will assume those responsibilities for which it was created and, which to this point, it has effectively avoided. The recalcitrance of the Port Authority has not been altered by the trial court's disposition and will not be altered by merely affirming that decision. A more effective disposition is needed.

II

HISTORY OF THE OBLIGATION OF THE PORT AUTHORITY TO PROVIDE MASS TRANSIT FACILITIES

In its opinion, the majority grudgingly acknowledges the Port Authority's obligation to become involved in mass transportation. After a perfunctory reading of the statutory framework of the Port Authority, the majority concludes that the existence of such a mandate is "a singularly appropriate subject for specific legislative directive, conspicuously absent here." (At 258).

While specific statutory directives have served as vehicles for recent Port Authority projects, *N. J. S. A.* 32:1–35.20 (authorization for the Port Authority to undertake mass transportation projects to link the various airports in the Port District), *N. J. S. A.* 32:1–35.21 (authorization to

build railroad lines to and facilities at the various airports in the Port District), its employment is in its infancy and affords no insight as to the previously reluctant forays which the Port Authority has made into the field of mass transportation. A full consideration of the statutory basis of the Port Authority and the history of its implementation reveals that the majority's interpretation of the Authority's powers and obligations is both short-sighted and erroneous. For instance, the statutory creation of the Port Authority evinces a clear legislative intent to have the Authority become involved in development of mass transportation. The majority position misconceives the role of the Authority to be a drone-like entity ultimately dependent upon enabling legislation, rather than a separate bi-state agency. Similarly, the majority fails to recognize the inherent limitations on the knowledge, information and expertise which are at the disposal of the New Jersey and New York Legislatures on the subject of mass transit operations. In light of this fact, the wisdom of relying upon legislative directives to address the panoply of needs within the field of mass transportation becomes problematical. The failure of the majority to account for these factors casts a large shadow upon the validity of its construction of the Port Authority's powers. These inadequacies within the majority position become apparent upon thorough consideration of the statutory origins of the Port Authority and the mandate which was encompassed in its original Compact and Comprehensive Plan.

A. Origins and Early Development; Compact and Comprehensive Plan

The Port Authority is a statutory product of a compact which was entered into by the States of New Jersey and New York in 1921.[1] Modeled after the recommendations of a joint

[1]New Jersey approved the compact by *L.* 1921, *c.* 151, now contained in *N. J. S. A.* 32:1-1 *et seq.* The comparable New York

commission,[2] the Port Authority represented a response to the dysfunctional competition and commercial disputes which historically had plagued the two states.[3] As such, it was intended to meet the needs and interests which the two states shared with respect to the Port of New York. This was expressly recognized in the preamble to the 1921 Compact, which stated:

> The future development of such terminal, transportation and other facilities of commerce will require the expenditure of large sums

legislation was adopted in *Laws of New York* 1921, *c.* 154, now contained in *N. Y. Unconsol. Laws*, § 6401 *et seq.* (McKinney 1961). Congressional consent to the compact was granted by *Pub. Res. No.* 17, *S. J. Res.* 88, *c.* 77, 42 Stat. 174.

At the time of creation, the agency was designated "The Port of New York Authority." *N. J. S. A.* 32:1-4. This was amended by *L.* 1972, *c.* 69, §§ 1, 2, contained in *N. J. S. A.* 32:1-4 and 32:1-4.1, to the more ecumenical "The Port Authority of New York and New Jersey." For the purposes of this opinion, the agency shall be referred to as the Port Authority or just Authority.

[2]The New York, New Jersey Port and Harbor Development Commission was a body whose representative membership were created by independent, though concurrently enacted bills which were passed by the Legislatures of New Jersey and New York in 1917. Composed of three commissioners from each state, the commission issued a preliminary report in 1918, New York, New Jersey Port and Harbor Development Comm'n, *Preliminary Joint Report, Transmitted to the Legislature*, February 18, 1918 (1918). This was followed by a progress report in 1919, and a comprehensive report in 1920, in which the commission proposed the establishment of a permanent body with interstate jurisdiction. *Joint Report with Comprehensive Plan and Recommendations* (1920). It subsequently submitted the tentative draft of the proposed compact. See *Bard, The Port of New York Authority*, 24-34 (1942).

[3]The enmity between the two states traces its roots as far back as the seminal case, *Gibbons v. Ogden*, 22 *U. S.* (9 Wheat.) 1, 6 *L. Ed.* 23 (1824). Although it has from time to time received exhaustive consideration in the case law, *New Jersey v. New York*, 28 *U. S.* (3 Pet.) 461, 7 *L. Ed.* 741 (1830); 30 *U. S.* (5 Pet.) 284, 8 *L. Ed.* 127 (1831); 31 *U. S.* (6 Pet.) 323, 8 *L. Ed.* 414 (1832); *In the Matter of Devoe Mfg. Co.*, 108 *U. S.* 401, 406-10, 2 *S. Ct.* 894, 27 *L. Ed.* 764 (1883); *State v. Babcock*, 30 *N. J. L.* 29 (Sup. Ct. 1862); *Central RR. of N. J. v. Jersey City*, 70 *N. J. L.* 81 (1903), a concise presentation of its history may be found in *Bard, supra*, footnote 2, at 5-24.

of money, and the cordial co-operation of the states of New York and New Jersey in the encouragement of the investment of capital, and in the formulation and execution of the necessary physical plans. . . . [*N. J. S. A.* 32:1–1]

While the Compact delineated the framework for the Port Authority and its operations, the necessity for a more specific implementation was recognized in Article X, which directed the state legislatures to adopt "a plan or plans for the comprehensive development of the port of New York" "as soon as may be practicable." *N. J. S. A.* 32:1–11. The formulation of this plan was undertaken by the Authority's initial board of commissioners, whose *Report with Plan for the Comprehensive Development of the Port of New York, December 21, 1921* (1921) was eventually enacted as the Comprehensive Plan mandated by the Compact.[4]

This plan envisioned an active and affirmative role for the Port Authority in the development of the Port District.[5] Section 8 of the Comprehensive Plan provided:

The Port of New York Authority is hereby *authorized and directed to proceed with the development of the port of New York* in accordance with said comprehensive plan as rapidly as may be economically practicable and is hereby vested with all necessary and appropriate powers not inconsistent with the constitution of the United States or of either state, to effectuate the same, except the power to levy taxes or assessments. [*N. J. S. A.* 32:1–33; emphasis supplied]

That fulfillment of this statutory mandate contemplated the involvement of the Port Authority in transportation matters of the Port District is undeniable. This responsibility, for

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[4]The Comprehensive Plan was enacted in *L.* 1922, *c.* 9, now contained in *N. J. S. A.* 32:1–25 *et seq.* New York approved the Comprehensive Plan in *Laws of New York* 1922, *c.* 43, now found in *N. Y. Unconsol. Laws* § 6451–68 (McKinney (1961)). Congressional consent was secured in *S. J. Res.* of July 1, 1922, *c.* 277, 42 Stat. 822.

[5]The metes and bounds of the Port District are defined in *N. J. S. A.* 32:1–3.

example, was explicitly mentioned in that portion of the preamble of the Compact cited above. Article XXII of the Compact further clarifies this responsibility by defining "transportation facility" as including:

. . . *railroads*, steam or electric, motor truck or other street or highway vehicles, tunnels, bridges, boats, ferries, carfloats, lighters, tugs, floating elevators, barges, scows or harbor craft of any kind, aircraft suitable for harbor service, and every kind of transportation facility now in use or hereafter designed for use for the *transportation or carriage of persons or property*. [*N. J. S. A.* 32:1–23; emphasis supplied]

The centrality of the railroads to the organizational and coordination schemes of the Port Authority was highlighted by the separate definition of "railroads."[6] This was a reflection of the final report by the New York, New Jersey Port and Harbor Development Commission, which in 1920 had recommended the establishment of a bi-state agency with appropriate jurisdiction. See footnote 2, *supra*. The report, whose factual findings served as the basis for the Compact and the Comprehensive Plan, found the commercial inadequacies of the metropolitan area to be "primarily a railroad problem." The absence of railroad coordination and accessibility at many places within the district consequently required "essentially a railroad plan." The Commission summarized its suggestions in a proposal which entailed the establishment of railroad beltline systems between New Jersey and New York, and concluded:

This remodeled terminal railroad system, bringing every railroad of the Port to every part of the Port, and thus giving every part of the Port opportunity to develop and to have the economical trans-

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[6]*N. J. S. A.* 32:1–23 provides:

"Railroads" shall include railways, extensions thereof, tunnels, subways, bridges, elevated structures, tracks, poles, wires, conduits, powerhouses, substations, lines for the transmission of power, car barns, shops, yards, sidings, turnouts, switches, stations and approaches thereto, cars and motive equipment.

portation service needed for its commercial and industrial growth and expansion, constitutes the comprehensive plan of the Commission — the plan which the Commission recommends for formal adoption by the two states. [New York, New Jersey Port and Harbor Development Commission, *Joint Report*, *supra* footnote 2, at 3]

This statutory responsibility to develop the transportation facilities of the Port District, and particularly facilities relating to railroad operations, contained an implicit obligation to foster passenger transportation service. Although the Port and Development Commission report concentrated on the freight shipment needs of the area, it did not preclude a comparable role for the Port Authority in passenger service. With one notable exception, the Port Authority's role in passenger service is confirmed by the early history of the agency. In this regard, however, even that exception, the 1928 veto message of Governor Alfred E. Smith of New York which rejected a New Jersey proposal for the development of a rapid transit system between the states, may be no more than a personal predilection. [7] See 134 *N. J. Super.* at 149. Noting that the Port Authority should "stick to this program . . .[for] the solution of the great freight distribution problem," Governor Smith at no time denied the agency's power to deal with passenger service, and only suggested a reordering of its priorities. More importantly, the position which he advocated was expressly repudiated by the Port Authority that same year. In a June 11, 1928 resolution supporting the continuation of a Suburban Transit Engi-

[7]Governor Smith, in what remains the only major statement questioning a Port Authority role in passenger traffic, remarked:

> I am satisfied that the Port Authority should stick to this program, and I am entirely unwilling to give my approval to any measure which at the expense of the solution of the great freight distribution problem will set the Port Authority off on an entirely new line of problem connected with the solution of the suburban passenger problem.

Veto Message, *Public Papers of Governor Alfred E. Smith of 1928*, 187–88 (1938).

neering Board,[8] the Port Authority recognized that it had a responsibility to the metropolitan commuter, based on its broader duty to develop transportation in the Port District:

> The Commissioners of the Port Authority have found in their studies that no adequate or effective interstate transportation development can take place without taking full account of *transportation of passengers* as well as of freight throughout the Port District.[9] [Emphasis supplied]

B. *Port Authority Involvement in the Area of Mass Transit; Reports, Studies and Legislation Concerning Mass Transit*

The continuance of its role in mass transportation has been reaffirmed by the Port Authority from time to time. The obligation to provide for passenger service within the

[8]The Suburban Transit Engineering Board had been created in response to a Port Authority suggestion in its 1927 Annual Report. As that report stated:

> It is our opinion that, in the long run, the greatest progress will be attained by having this Engineering Board undertake the responsibility for the preparation of the engineering section of a comprehensive suburban transit plan for the entire port district. The Port of New York Authority, *Annual Report for 1927*, 56 (Jan. 20, 1928).

Parenthetically, it should be noted that this body was the intended recipient of the funds which Governor Smith vetoed. The Port of New York Authority, *Annual Report for 1928*, 63 (Dec. 31, 1928).

[9]*Annual Report for 1928*, *supra* footnote 8, at 64–66. The Port Authority answered more directly the fears expressed by Governor Smith in a subsequent part of its June 11, 1928 resolution:

> The Commissioners of the Port Authority are satisfied from the reports of their staff that continuance of the work of the Suburban Transit Engineering Board and the participation therein by members of the staff of The Port of New York Authority will not at this time divert any of their efforts away from the effectuation of the statutory Comprehensive Plan nor from their duties in the field of protecting the Port nor from any other pending work of the Port Authority, but on the contrary, the continuance of such Suburban Transit Engineering Board's work will facilitate the other work of the Port Authority. [*Id.* at 65]

Compact's injunction to the Post Authority has not only been acknowledged by those whose occupations and interests are related to the transportation field,[10] but by ranking members of the Port Authority staff as well. For example, the following colloquy between Assemblyman J. Edward Crabiel and the Port Authority's then Executive Director Austin J. Tobin occurred at a 1958 legislative hearing:

> ASSEMBLYMAN CRABIEL: Mr. Tobin, just to clear my mind on certain key points — I have been reading your report and listening to your talk — there is no question that, as far as the compact between the two states is concerned, ***the Legislatures could direct the Port Authority to do rapid transit and that that would be within their compact.***
>
> MR. TOBIN: ***Yes sir. There's no question about it.*** [***Hearings on Assembly Bills No. 16 and 115 and Senate Bill No. 50, supra*** footnote 10, Nov. 24, 1958, at 44] (emphasis supplied).

The manifestations of this responsibility have been insignificant such as the separate sections which the Authority devoted to "Suburban Transit" in its earlier Annual Reports (a practice by the way, which has been resumed since the Port Authority's acquisition of the H & M railroad in 1962). See T. W. Kheel & R. J. Kheel, "The Port Authority 1962 Covenant — Bar to Mass Transportation," 27 *Rutgers L. Rev.* 1, 5(1973); The Port of New York Authority, *Annual Report for 1923,* "Commuter Passenger Traffic," 35–36 (Jan. 19, 1924); *Annual Report for 1924,* "Congestion of Passenger-Traffic," 23–24 (Jan. 24, 1925); *Annual Report for 1929,* "Suburban Transit," 27–28 (Dec. 31, 1930). More indicative, however, of the Port Authority's

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[10]See ***Hearings on Assembly Bills No. 16 and 115 and Senate Bill No. 50 before N. J. Assembly Comm. on Fed. & Interst. Rels. and Assembly Comm. on Highways, Transp. and Pub. Utilities,*** Nov. 24, 1958, at 18A (Statement of Augustus S. Dreier, Counsel, Inter-Municipal Group for Better Rail Service); Dec. 3, 1958, at 22-A (Statement of Herman T. Stichman, Trustee, Hudson & Manhattan Railroad) (hereinafter referred to as Assembly Hearings); ***Caro, The Power Broker Robert Moses and The Fall of New York,*** 922–23 (1974).

role in rapid transit operations have been the infrequent reports which it has issued on this subject.[11] The representativeness of at least 14 of these reports cannot be premised on any successful projects which they have stimulated or realized. As frankly admitted by Edward J. O'Mara, a chairman of the Metropolitan Rapid Transit Commission (a Port Authority-funded investigative agency which itself produced an unsuccessful series of legislative proposals):

> For at least 35 years, there has been a growing public awareness of the importance of mass transportation in the metropolitan region in the State of New Jersey. At least 14 more or less extensive studies have been made of the problem by various committees and commissions. Nothing has ever come of them, and in the meantime the problem has been becoming progressively more acute. [***Assembly Hearings,*** Nov. 24, 1958, at 70A]

See also 2*d Hearing before N. J. Sen. Comm'n (Created un-*

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[11]These reports have been conducted on a variety of topics and in conjunction with various other interested organizations. Some, though by no means all, of these studies have included a continuing study begun in 1927 of the suburban transit facilities to relieve traffic congestion in conjunction with a variety of other groups (pursuant to New Jersey legislative authorization, *L.* 1927, *c.* 277); a 1937 study entitled "Suburban Transit for Northern New Jersey (Mar. 1, 1937) concerning interstate and suburban passenger problems within the Port District and New Jersey in particular (undertaken pursuant to *L.* 1936, *c. J. Res.* No. 6); a continuation of studies begun in 1937 and the presentation of legislative proposals for implementing a new transit system (pursuant to *L.* 1938, *c. J. Res.* No. 1); a 1948 study concerning the development of a rapid transit system in Northern New Jersey which would link Newark Airport and New York City (undertaken pursuant to a request by New Jersey Governor Alfred E. Driscoll); 1948 study concerning the development of a north-south transit line in Hudson County (initiated at the request of the City of Bayonne); and the creation in 1952 of the Metropolitan Rapid Transit Commission to undertake a comprehensive study of the transit problems of the Port District (*L.* 1952, *c.* 194). By agreement reached in 1955, the Port Authority provided $800,000 when this last study was inaugurated. The Commission's report was released in 1958. In addition, the Port Authority in the early 1960's conducted a series of studies concerning the feasibility of its acquiring the operations of the H & M railroad, and later, the conditions under which the authority would do so.

der Sen. Res. No. 7 (1960) and Reconstituted under Sen. Res. No. 7 (1961)) to Study the Financial Structure and Operations of The Port of New York Authority, Jan. 27, 1961 (2d day), at 64–66 (Statement of Austin J. Tobin, Executive Director, Port of New York Authority). In this respect, these studies provide a broad overview of the historic approach of the Port Authority to the problems of urban mass transit. This background is particularly important because what the Court is truly asked to consider is the manner in which the Port Authority has dealt with the problems of mass transit in the Port District, and the attitudinal reluctance which has characterized its efforts in this area of transportation.

These studies, in conjunction with the annual reports which are issued by the Port Authority, possess several characteristics worth noting. First, virtually none of the studies resulted from the Port Authority's own initiative. Most of the studies were the product of either legislative or other governmental requests for pertinent information and proposals. See footnote 11, *supra*. While the failure to take affirmative administrative or investigatory action may not necessarily be indicative of an agency's abdication of responsibility in the case of the Port Authority, the failing is particularly suspect. This is because the duties expressly imposed on the Port Authority by the 1921 Compact were those to "make plans for the development of said district, supplementary to or amendatory of any plan theretofore adopted;"[12] and to suggest to the state legislatures recommended means to improve Port commerce.[13]

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[12] *N. J. S. A.* 32:1–12, which was contained in the original Compact as Article XI and which is indicative of a statutory mandate, provides:

> The port authority *shall* from time to time make plans for the development of said district, supplementary to or amendatory of any plan theretofore adopted, and when such plans are duly approved by the legislatures of the two states, they shall be binding upon both states with the same force and effect as if incorporated in this agreement. [Emphasis supplied]

[13] *N. J. S. A.* 32:1–13 provides:

> The port authority may from time to time make recommendations to the legislatures of the two states or to the congress of the United States, based upon study and analysis, for the better conduct of the commerce passing in and through the port of New York, the increase and improvement of transportation and terminal facilities therein, and the more economical and expeditious handling of such commerce.

Second, none of these studies contains an expressed commitment (much less a recommendation of such a commitment) by the Port Authority to undertake the construction or implementation of a mass transit system. Instead, most of them recommend the assumption of these obligations by other governmental or quasi-governmental bodies and agencies. See The Port of New York Authority, *Suburban Transit for Northern New Jersey*, 10 (1937); The Port of New York Authority, *Annual Report for 1958*, 38–42. In conjunction with this, it should be noted that the Authority was one of the staunchest supporters of two New Jersey legislative proposals, S–50 and A–115, which were introduced and discussed in 1958. See *Assembly Hearings, supra*, Nov. 24, 1958, at 44, 49 (Statements of Austin J. Tobin, Executive Director, Port of New York Authority). Not surprisingly both of these measures presented plans for the establishment of an independent agency to handle matters relating to mass transportation. Conversely, the Port Authority was strongly opposed to a companion proposal, A–16, which would have authorized the agency itself to develop, improve and coordinate the rapid transit facilities in the Port District. *Assembly Hearings, supra*, Nov. 24, 1958, at 18–19 (Statements of Austin J. Tobin, Executive Director, Port of New York Authority).[14]

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[14] On this point, a noted transportation expert, Michael N. Danielson, observed:

> A good many people in the New York area, particularly in New Jersey, could see no point in creating another agency, whether bi-state or tri-state, as long as the Port of New York Authority apparently possessed both the jurisdiction and financial capacity to tackle the regional rail problem. Time and again, the Port Authority fended off these forays, emphasizing that there was an "absolute incompatibility between railroad deficits and the PNYS'S contractual limitations with its bondholders . . . and to confine itself to self-supporting projects." [*Danielson, Federal-Metropolitan Politics and the Commuter Crisis*, 23 (1965)].

Finally, as previously noted, there has been a startling absence of tangible progress resulting from, or attributable to these investigatory efforts. This is true even though the Port Authority has recognized the commuter problems which beset the New York metropolitan area. As early as 1925, in its Annual Report, the Authority observed:

> **While hundreds of millions of dollars have been spent in urban rapid transit during the past decade, no commensurate amounts have been expended on suburban rapid transit, and the commuter has reached the limit of his endurance where the trunk lines leading into New York City are incapable of handling both suburban and through traffic. The passenger service of every railroad in the Port District is taxed to its limit by the requirements of this service. There is barely room during the rush hours for the trains carrying freight because of the commuter service, while passengers and freight must both necessarily move during these hours. [The Port of New York Authority, *Annual Report for 1924*, 23 (Jan. 24, 1925)]**

See also The Port of New York Authority, *Annual Report for 1927*, 10, 53 (Jan. 20, 1928). Over the years, this recognition has increased with its realization of the expanding dimensions of commuter congestion and the inability of private transit facilities to cope with the problem. The Port of New York and New Jersey, 1972 *Annual Report*, 10–15 (1972); 1973 *Annual Report*, 10–15 (1973); 1974 *Annual Report*, 4–6 (1974).

The Port Authority's ineffectual investigative efforts cannot be justified due to a theoretical lack of jurisdiction in mass transit operations. Such jurisdiction was given to the agency in the Compact of 1921. Nor is the lack of success due to the financial inability of the Port Authority to assume additional obligations. As the trial court found, the Authority is not only financially sound, but has suffered no detrimental effects from the repeal of the protective 1962 Covenant:

> **Suffice it to say that between 1962 and 1974 the security afforded bondholders had been substantially augmented by a vast increase in Authority revenues and reserves, and the Authority's financial ability to absorb greater deficits, from whatever source and without any**

> **significant impairment of bondholder security, was correspondingly increased. [134 *N. J. Super.* at 194–95]**

Rather, the limited effectiveness of these studies is merely symptomatic of an underlying limitation which the Port Authority has imposed on its own involvement in mass transportation. This limitation, which is derived from a narrow construction of its statutory powers, precludes an undertaking by the Authority unless the relevant project will be financially self-supporting, or will only generate deficits within conservatively defined limits. While the definition of the limitation is presented in purely financial terms, its effect has been to severely restrict the scope of activities in which the agency may engage. Because the majority of mass transportation facilities are closely associated with high deficits, the practical operation of the Port Authority's self-imposed restriction has prevented the Authority from fulfilling its rapid transit obligations.

C. *History of the Self-Supporting Concept*

While the provisions of the Compact and Comprehensive Plan sketched a broad authorization in terms of the activities which were within jurisdiction of the Port Authority, the powers accorded to it were not commensurate with its tasks. Without the necessary power, the Authority could not unilaterally support its statutory mandates, much less initiate action in their behalf:

> **An impressive body of activities was thus laid out wherein the Port Authority could formulate the needs of the port as a whole and be vigilant to protect its interests. It would serve as a focus and agent of the forces of unity within the port. The primary requirement in this field would not be legal power but adequate funds and continuous application. The Port Authority never lacked support with respect to the former, and was well conceived to function with respect to the latter. But success along this line of endeavor would depend upon cooperation from public agencies and private interests. Where conflicts developed it could make progress very slowly, if at all. [*Bard*, *supra*, footnote 2, at 58–59]**

As a result of setbacks incurred in early legal skirmishes with the powerful railroads in the 1920's, the Port Authority appeared to assume a less assertive role in the port's development than that anticipated by its proponents. Reluctant to promote otherwise desirable activities within the Port District, the Authority restricted its goals to the dubious task of maintaining a balanced budget. The difficulty of this objective was compounded by the fact that under both the Compact and the Comprehensive Plan, the Port Authority had been denied the power to either levy assessments or pledge the credit of either state. *Annual Report for 1954*, vi (1954). Consequently, to offset the costs and losses which it incurred, the agency was dependent upon the revenues which it realized from its various projects and facilities.

While this new objective in the early years of the Port Authority was tempered by a "rule of economic practicability," The Port of New York Authority, *Annual Report for 1926*, 5 (Jan. 20, 1927), its importance was later elevated by the increased emphasis placed on self-sufficiency. In other words, because the fiscal stability of the Port Authority was dependent upon the revenues of its facilities, it was necessary for all projects to demonstrate their self-supporting capacity before the Authority would undertake their implementation. Thus, James C. Kellogg, III, the then Vice-Chairman of the Port Authority, read from a prepared statement before a Senate Commission in 1960, as follows:

In order that the Port Authority might carry out the tremendous and continuing task of developing the public terminal and transportation facilities of this metropolitan area, the two Legislatures clothed it with all necessary and appropriate powers of port and terminal development, with the important exception of the power to tax or to levy assessments. This reservation is the key to the whole concept of the Port Authority, which is that of a self-supporting agency, whose public projects are carried on through the development of their own revenues and charges, and which imposes no burdens on the general taxpayer. [*Hearings before N. J. Sen. Comm'n Created under Sen. Res. No. 7 (1960) to Study the Financial Structure and Operations of the Port of New York Authority*, September 27, 1960, 7–8 (Statement of James C. Kellogg, III, Vice-Chairman of the Port Authority)].

The objective of a self-supporting authority, while salutary in principle, was inconsistent with the Port Authority's original objectives and early history. In its annual report for 1924, the Authority explicitly rejected the self-supporting concept as a basis for its operations:

Preferably, and in the main, therefore, the Port Authority regards itself rather as the guardian and guide of the Port District, protecting it against attacks both from within and without, and directing its activities and developments with a view to procuring the greatest cooperation of existing agencies, the utmost efficiency and the minimum of cost. *If such is to be its primary function it should not be expected to be self-supporting.* [The Port of New York Authority, *Annual Report for 1924*, 9–10 (Jan. 24, 1925); emphasis supplied]

Moreover, the self-supporting concept as a fundamental precept of the Port Authority's financial scheme is belied both by the projects which it embarked upon after its creation and by subsequent developments in its financial structure. As the trial court observed, because of the heavy investment required by these early projects, the Port Authority was confronted with large deficits from the outset. 134 *N. J. Super.* at 140. However, rather than restricting the Authority's activities, New Jersey and New York encouraged such projects by advancing funds, transferring control of lucrative facilities (such as the Holland Tunnel) to the Authority, and permitting the Authority to issue "open-ended" bonds. This latter device, in particular, helped free the Port Authority from absolute reliance on self-supporting projects. By placing all revenues derived from the sale of open-ended bonds into a common fund, the Port Authority was able to free deficit operations from the inadequate sales of their particular bonds. *Goldberg, A History of the Port of New York Authority Financial Structures*, 5 (1964). The pooling of resources not only permitted the Port Authority to finance debt-ridden facilities through those which were profitable, but simultaneously afforded bondholders a certain degree of security regardless of the success or failure of any given project. The open-ended financing of the Port

Authority, which was originally introduced in the form of the General Reserve Fund (*N. J. S. A.* 32:1–142), literally, the pool into which all funds were paid, was later expanded by the Authority's adoption of the Consolidated Bond Resolution in 1952. This resolution, which abandoned the practice of earmarking funds for specific projects, authorized the issuance of bonds whose revenues would be designated by the Authority for a given project according to its needs. As the trial court found, the resolution obviated any further concern for maintaining the self-supporting concept as a prerequisite to Port Authority involvement in a project:

> **With the adoption of the CBR the "self-supporting" facility concept which had governed earlier authority financing ceased to have the significance previously attached to it; for under the CBR the Authority's financial structure is based on a unitary enterprise concept and all revenues from all facilities are pooled. Individual facilities are not financed independently of the rest of the Authority. The facilities contribute their revenues for debt service on all Authority bonds according to their earning power and without regard to the amount of bonds issued for the construction of any particular facility. [134 *N. J. Super.* at 143]**

Enactments such as the General Reserve Fund and the Consolidated Bond Resolution created the possibility for the involvement of the Port Authority in traditionally deficit operations such as mass transportation. Nonetheless, the translation of this new financial freedom into practical action was not forthcoming from the Port Authority:

> **That cashbox, so long empty, was full now, thanks to the postwar traffic boom, . . . the Port Authority's was worth $700,000,000. Long on cash, moreover, the Port Authority was short on dreams. The visionaries who had created it were long gone from its councils; Julius Henry Cohen had been replaced by money men like Cullman and Colt and Pope whose eyes were brightened by the balances in the Authority's ledgers, not by the potentialities for improving the common weal that those balances represented. The purpose for which the Authority had been created — the development of an *overall* transportation system to knit together a great port — had been lost sight of for years. Plans the Authority had aplenty, of course, but unrelated plans, plans for individual projects, joined by no link other than the fact that their construction would return the agency profit. [*Caro, supra*, footnote 10, at 922–23]**

The resultant program which the Port Authority pursued represented less of an integrated effort to organize and coordinate the commerce of the port of New York, and more of an administrative mish-mash with little cohesiveness or relation to the agency's statutory mandate. Thus, construction of a World Trade Center, with little or no relation to the activities for which the Port Authority was created, was suddenly elevated to an importance which transcended that of a more traditionally-regarded responsibility of the Authority such as mass transportation.

The underlying rationale for these actions was unmistakably attributable to retention of the self-supporting limitation to which the Port Authority had previously adhered. This was made clear by Executive Director Tobin of the Port Authority when questioned at a 1958 hearing about the manner in which future revenues and reserves would be committed:

> **Well, it is closed unless those future bond issues have to do with projects that can be made self-supporting and in which the Commissioners of the Port Authority will not only certify as *a matter of conscience* and a matter of record that they believe that they can be made self-supporting and will add to the general credit of the Port Authority; but also if they can demonstrate arithmetically on sound projections of its existing net revenues and its maximum future debt service that those projects will not hurt this bondholder. That's all he has. If that bondholder has an open end bond without those restrictions, he has a piece of paper. [*Assembly Hearings, supra*, November 24, 1958, at 38 (Statement of Austin J. Tobin, Executive Director, Port of New York Authority); emphasis supplied]**

This self-limitation has exacerbated the Port Authority's demonstrated lack of initiative. For example, although the Port Authority in 1955 agreed to provide the Metropolitan Rapid Transit Commission with $800,000 for that body's study of a metropolitan scheme of mass transit, the price which the Authority extracted for its financial support was a "Memorandum of Understanding" which precluded its own role in any deficit operations which the Commission

might recommend. *Danielson, supra* at 23; *Assembly Hearings, supra,* December 3, 1958, at 91–A to 92–A (Statement of Frank H. Simon, Executive Director, Metropolitan Rapid Transit Commission). More importantly, perhaps, the Port Authority's inertia has interjected itself in the relationship between the agency and the Legislatures which it allegedly serves. This has been done in an often contradictory fashion as illustrated by the following discussion between Assemblyman Crabiel and Executive Director Tobin:

ASSEMBLYMAN CRABIEL: What I'm getting at here is, you're saying categorically that you cannot take a deficit. Now, I'm raising the point that as far as the Legislatures of the two states, when they established the compact there was nothing in the compact and nothing in the instructions from the Legislatures to the Port Authority that they could not undertake a deficit operation.

MR. TOBIN: Well, excuse me, sir. I'd say that there was. I would say that the way the statutes are phrased, it could undertake nothing except a self-supporting operation. We have no way of financing anything but a self-supporting operation.

ASSEMBLYMAN CRABIEL: Well how do you account for the fact, then, that you have operated deficit operations?

MR. TOBIN: Because the pooled revenues have been sufficient. Because we believed also, when we went into those, that they could be self-supporting and we were wrong.

ASSEMBLYMAN CRABIEL: That's what I was pointing up. [*Assembly Hearings, supra,* November 24, 1958, at 45]

III

THE ROLE OF THE PORT AUTHORITY

Ultimately, those who are most hurt by the Port Authority's failure to enter the field of mass transportation are, of course, the commuters. Absence of Port Authority initiative in this area is a direct reflection of the deficits which are inherent in the provision of this public service:

Until the late 1950's, transit operations in the United States were generally profitable and, consequently, attractive to investment. Decline in patronage and increasing labor and equipment costs have completely reversed this trend to a point where today, public transit in its everyday operations in most cities is a losing proposition. The losses are not as great as sometimes presumed but, in most

cases, average between 20 and 25 percent annually. Therefore, public transit — like many other sectors of the transportation industry, including private automobile transportation — now requires substantial public support in the form of direct financial subsidies to be capable of rendering necessary services. [Roeseler and Levi, "State Subsidies for Public Transit: An Overview of Current Legislation," 4 *Urban Lawyer* 59, 60 (1972)]

See also Kneafsey and Edelman, "A Market-Oriented Solution to the Northeast Railroad Dilemma," 41 *I. C. C. Pract. J.* 174 (1973–74). This problem concerning the financial weaknesses of mass transit facilities has been realized within the New York metropolitan area. This, no doubt, has resulted from both the unusually heavy demands which have been placed on these systems in the Port District, and the lack of a perceived common interest among the District's geographic and political components. *Danielson, supra,* at 21–22.

The Port Authority's failure to assume an active role in solving this problem has had a concurrent effect on the traveling habits of the average commuter. Faced with increasing service cutbacks and escalating fares, the commuter is left with fewer alternatives to the private automobile. Grubb, "Urban Transportation Alternatives to the Automobile," 39 *I. C. C. Pract. J.* 19 (1971–72); Cooper, "Prospects for a Mass Movement to Public Transit," 5 *Urban Lawyer* 679 (1973). His increasing resort to this mode of transportation in turn has caused a drastic increase in traffic congestion and air pollution which are commonly associated with the metropolitan area.

These problems have stimulated legislative responses on both the federal and state levels. The federal response consists primarily of the Urban Mass Transportation Act of 1964, 49 *U. S. C. A.*, § 1601 *et seq.*, which purports to encourage "the planning and establishment of areawide urban mass transportation systems needed for economical and desirable urban development, with the cooperation of mass transportation companies both public and private." 49 *U. S. C. A.*, § 1601. See Haley and Watkins, "The Urban Mass Transporta-

tion Assistance Act of 1970 — A Federal Program Comes of Age," 16 *N. Y. Law For.* 741 (1970). As a corollary to the urban mass transit crisis, the federal government has enacted the Clean Air Act, 42 *U. S. C. A.*, § 1857 *et seq.* Similar considerations produced comparable legislation in New Jersey, Emergency Energy Fair Practices Act of 1974, *L.* 1974, *cc.* 2, 6; Executive Order No. 1 (Feb. 5, 1974).

These legislative enactments were most recently recognized in a report issued by the Joint Transportation and Communications Committee of the New Jersey Legislature. *Report of the Senate and General Assembly Joint Transportation and Communications Committee (Pursuant to Assembly Concurrent Res. No. 211 of 1974)*, October 6, 1975. As the report noted:

> The legislation passed by New Jersey during the last four years clearly reflects the determination on the part of its officials to direct the Port Authority towards making a greater financial commitment to mass transit. In order to determine whether New Jersey has been treated by the Port Authority in a fair and impartial manner the Committee has investigated the degree of Port Authority responsiveness to meeting the mass transportation needs of the State. [*Id.* at 13]

The Committee's conclusion was succinct as it was unfortunate:

> The Committee recognizes that the Port Authority has acquired a reputation for its engineering, planning and management skills. It is the conclusion of the Committee, however, that in the area of mass transportation the Port Authority's performance has not been satisfactory. [*Id.* at 17]

The Committee's conclusions were premised upon the same type of factors which I have considered above. While the Committee was hopeful that the Port Authority would take its mass transportation responsibilities "more seriously" in the future, it nonetheless pledged "its vigilance to see that the

Port Authority completes the mass transportation projects it has promised to complete." *Id.* at 18, 19.[15]

The sensitivity of the state government to the urgent need for more modern means of public transportation has not been confined to the legislative branch. In his recent "State of the State" address, Governor Byrne not only recognized this problem, but concurrently cited the Port Authority's responsibility for its solution. Perhaps even more important, the Governor indicated his willingness to impose an affirmative sanction on the Port Authority should the desired action in the area of mass transit not be forthcoming:

> How do we keep the railroads running at a time when the state subsidy program costs over $100 million a year and has been growing by more than 35 per cent a year? Should there be an overall operating agency for these lines? What about the communities and industries served by lines soon to be abandoned? Where can we find the $255 million required to match federal funding for the

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[15]While the history of the Port Authority's involvement in mass transportation has been discouraging, the prospects for renewed efforts by the agency in this area of endeavor are hopeful. In the above cited report by the Legislature's Joint Transportation and Communications Committee, the development of a mass transportation plan by the Port Authority was noted. *Report of the Senate and General Assembly Joint Transportation and Communications Committee (Pursuant to Assembly Concurrent Res. No. 211 of 1974*, 16–17 (October 4, 1975)). This plan committed the Port Authority to the provision of additional direct rail service to Penn Station in New York City for New Jersey commuters, the expansion of the Midtown Bus Terminal, the construction of a rail link to Kennedy Airport and the extension of the PATH system from Newark to Plainfield. Although the Urban Mass Transportation Administration on December 19, 1975 rejected New Jersey's request for $278-million to construct the PATH extension, the State's expressed intention to reapply for such funds will create the possibility of a continued role for the Port Authority in mass transportation. *The Sunday Star-Ledger*, December 21, 1975, at 1, 8; *The New York Times*, December 22, 1975, at —; *The New York Times*, January 4, 1976, at 34. This persistence has apparently been successful as federal approval of a $400-million block grant for the PATH extension to Plainfield and other mass transit projects is anticipated. *The Star-Ledger*, February 10, 1976, at 1.

modernization of two major commuter lines and the extension of PATH to Plainfield?

The Port Authority of New York and New Jersey must increase its commitment to these efforts. If it is unwilling to do so, we will insist that it rescind the toll increases instituted last year for the specific purpose of funding improvements in the public transportation system. [Annual Message of Governor Brendan T. Byrne, Jan. 13, 1976, at 19]

I, too, would similarly take this opportunity to demonstrate the vigilance which has motivated the Joint Committee and the Governor. The Port Authority has too long neglected the responsibility with which it was statutorily charged in 1921. In *So. Burlington Cty. NAACP v. Tp. of Mt. Laurel*, 67 *N. J.* 151, 189 (1975), we recognized the significance of transportation to the overall development of an urban area. I would today reaffirm this significance.

IV

CONCLUSION

The relief which I recommend today is intended as an answer to a problem which has assumed crisis proportions. The Port Authority is the producer, the director and the main character of the play known as "The Disease of Mass Transportation." This malady has suffered too long from the benign neglect of public agencies such as the Port Authority, and such neglect has permitted the disease to spread unattended. The resulting state of affairs may most accurately be described as one of emergency. While the appellation "emergency" was at one time reserved for calamitous and natural occurrences, the inadequate and deteriorating quality of mass transit in the metropolitan area has had an eroding effect on the urban environment in which it operates. This effect has been measurable not only in terms of the unending lines of commuters who have been inconvenienced by inefficient service, but also in terms of traffic congestion with its attendant pollution as well. The courts of this country have long recognized that such emergent circumstances may

serve as a mandate to administrative action. "While emergency does not create power, emergency may furnish the occasion for the exercise of power." *Home Building & Loan Ass'n v. Blaisdell*, 290 *U. S.* 398, 425–26, 54 S. Ct. 231, 235, 78 *L. Ed.* 413, 422 (1934); *Hourigan v. North Bergen Tp.*, 113 *N. J. L.* 143, 148 (E. & A. 1934).

For an Authority that is long on cash and short on dreams,[16] it is time to respond for those who have long suffered the inconvenience and expense which have resulted from the Port Authority's inaction.

I would order the Port Authority, its Commissioners and its Executive Director to not only complete those projects to which it is already committed, but to formulate and present plans and suggestions for a regional mass transportation scheme to the Legislatures of New York and New Jersey. Implicit in this would be the requirement that such efforts be completed in an expeditious fashion and within a fixed period of time. This injunction is necessary to bring home the importance of Authority action in the face of the current transportation crisis.

In proposing this relief, I should not be understood as advocating usurpation of the functions of either the executive or legislative branches of government. The majority's characterization of my position is in error. (At 259). My disposition does not contemplate ordering either the Governors or the Legislatures of the States of New Jersey and New York to undertake any particular course or courses of action. I would be loathe to intrude upon the relationships which have developed between these other branches of state government and the Port Authority. Nonetheless, I am all too aware of the fact that expertise in the field of mass transit operations resides in the body which was originally vested with both power and jurisdiction in that area, namely the Port Authority. By according the Authority a statutory mandate to

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[16] *Caro, supra, footnote* 10 at 922.

undertake mass transportation projects, it was anticipated by both States that the Port Authority would actively research, promote and recommend projects to be authorized and implemented by the State Legislatures. It is precisely the Port Authority's reluctance to utilize its expertise that has frustrated this basic first step towards the development of a much-needed integrated mass transportation system in the metropolitan area. Therefore, I would order the Port Authority to proceed with this initial planning stage, while, at the same time, acknowledging that ultimate adoption and implementation of the resultant plans remain a legislative and executive prerogative. The declared willingness of those branches of government to adopt appropriate measures leaves me confident that only timely suggestions by the Port Authority are needed to point the direction towards improved mass transit operations.

Although I am unsure whether it is the perception of my suggested order as a usurpation of executive and legislative function which underlies the majority's disagreement with such relief, I am, nonetheless, clear in my opposition to the lesson in civil procedure which the majority would impose on this case. I find that the majority's exercise of power under a writ of *mandamus* would ill-befit a remedy with such a Marshallian association. *Marbury v. Madison,* 5 *U. S.* (1 Cranch) 137, 2 *L. Ed.* 60 (1803). This is a direct result of not only the restrictive but the erroneous construction which the majority gives to the powers implicit in a *mandamus.* The writ of *mandamus* is a remedial process whose essential function is to compel the performance of a ministerial action *or the exercise of a discretionary function. Roberts v. Holsworth,* 10 *N. J. L.* 57 (Sup. Ct. 1828); *Switz v. Middletown Twp.,* 23 *N. J.* 580 (1957). This mode of relief is particularly appropriate with regard to recalcitrance by public officials or authorities. *Bd. of Taxation v. Belleville,* 92 *N. J. Super.* 338, 340–41 (Law Div. 1966). While the court has the power under a *mandamus* to compel action, it does not similarly have the power to control discretion in the performance of

the designated action. Such discretion properly resides in the functioning authority.

By its construction of the *mandamus,* the majority would not only accord the authority discretion in the manner of performing the compelled action, but would permit the authority discretion as to whether the ordered action should be performed at all. Although the majority has recognized that the Port Authority has resisted efforts to promote its involvement in mass transportation, it would consider this to be an exercise of discretion which would preclude a *mandamus* or an order similar to the one which I have suggested:

> **As we have sought to demonstrate, the circumstances before us do not at all invite or accommodate the remedy proposed. This is so because the Authority (whose function is clearly not ministerial) has in fact exercised its discretion, even though that exercise has resulted in the rejection of a policy favoring mass transportation. Being a judgment decision its wisdom may be open to dispute; but as to the propriety of this Court's refusal to intrude on the underlying policy determination, there can be no question in the circumstances before us [At 259].**

I cannot subscribe to such reasoning, whose circular nature would undercut the relief which the majority otherwise feels warranted under the circumstances and which would effectively emasculate the *mandamus,* or any similar relief, as a remedy.

I reject the majority's approach to the problem of this case within a procedural context. We have been taught that there are no rights without remedies. By stripping us of our remedies, the majority is most assuredly divesting us of our rights. *Marbury v. Madison, supra,* 5 *U. S.* (1 Cranch) at 163, 2 *L. Ed.* at 69. Furthermore, we have long passed the days wherein cases were decided on the niceties of procedural technicalities. *Hodgson v. Applegate,* 31 *N. J.* 29, 43 (1959); *Edelstein v. Asbury Park,* 51 *N. J. Super.* 368, 385 (App. Div. 1958). There is no need to resurrect in this case another of these manifestations of by-gone days.

Even if I were to acknowledge the necessity of specifically resorting to a *mandamus* or its equivalent, I could not justify withholding such relief in this case; nor can I presently understand the distinction which the majority draws between the *mandamus* which they recommend and the order which I propose. Granting that mandamus is an "extraordinary remedial process," *Beronio v. Pension Comm'n of Hoboken,* 130 *N. J. L.* 620, 623 (E. & A. 1943), aff'g 129 *N. J. L.* 557 (Sup. Ct. 1943), I cannot see the unfortunate plight of the more than 30 million commuters who are dependent upon the Port Authority's transportation services annually, nor the Authority's benign neglect of their plight, as being anything less than extraordinary. This is particularly so where to adopt the majority's approach would permit the Port Authority to ignore the statutory responsibilities with which it was charged in 1921.

The majority in *Gaby v. Port of New York Authority* has been unwilling to take the action which I regard as imperative. From its disposition I must, therefore, respectfully dissent.

For affirmance—Justices MOUNTAIN, SULLIVAN and CLIFFORD and Judges CONFORD, CARTON and HALPERN—6.

Concurring in part and dissenting in part—Justice PASHMAN—1.

Excerpt from Exhibit P-1

DUN & BRADSTREET, INC.

MUNICIPAL CREDIT REPORT

December 28, 1961 Bond Sale 1-4-62 Revenue Service

THE PORT OF NEW YORK AUTHORITY

Prospects: SUPERIOR. The Port of New York Authority is a financially strong, multi-purpose, bi-state agency with a substantial history of accomplishments. It has competent management and continues to draw heavily on its ample earnings and borrowed funds to finance large programs of capital improvements. Among the programs now under way are construction of a second deck to the George Washington Bridge and related improvements, redevelopment of LaGuardia Airport, development of New York International Airport, improvements at Newark Airport, development and improvement of Port Newark and the Brooklyn-Port Authority Piers, and enlargement of the Port Authority Bus Terminal and the Lincoln Tunnel approaches connecting with it. Numerous efforts have been made to have the Authority assist in solving the commuter railroad problem in the area, and one program appears to be about ready to proceed. Under it the Authority will purchase commuter railroad cars for commuter railroads operating between New York State municipalities, and as a financial safeguard the financing of this program is insulated from the remaining financial structure of the Authority. The proposal to have the Authority take over the bankrupt Hudson & Manhattan Railroad has not yet secured the necessary legislation from both states, but efforts to tie this program in with the proposed World Trade Center, which the Authority has in planning, appear to be meet-

ing with more enthusiasm than the initial proposal. No recent developments have been reported concerning additional airport facilities.

Bond Sale: The Port of New York Authority is offering for public sale on January 4, 1962, $25,000,000 Consolidated Bonds, Nineteenth Series (First Installment), dated November 1, 1961, and due November 1, 1991. The bonds will be retired periodically, however, and for this purpose a mandatory periodic retirement schedule is specified, in amounts that will allow retirement annually by November 1 ranging upward from $250,000 in 1964 to $2,000,000 in 1991. The bonds are callable at the Authority's option on any November 1 beginning 1964 at 103% to meet the retirement schedule or on any interest payment date beginning November 1, 1968 at 103% other than to meet the retirement schedule; both call provisions specify a declining scale of premiums. Interest will be payable May 1 and November 1 at the rate named by the purchaser. The bonds will be coupon in form, registerable as to principal alone, or as to both principal and interest and, if so registered, convertible into coupon bonds at the expense of the holder. The bonds will be payable on a par with the Authority's other Consolidated Bonds, as described below. All legal proceedings pertaining to these bonds are subject to approval by Sidney Goldstein, General Counsel of the Authority, and by Hawkins, Delafield & Wood, Bond Counsel for the Authority.

Bonded Debt: The Authority's gross bonded debt as of November 30, 1961, adjusted to include the bonds now offered, amounts to $657,745,000. This total includes $50,692,000 General and Refunding Bonds, Series 8 through 12 and 15; $64,512,000 Air Terminal Bonds, Series 1 through 3; $7,630,000 Marine Terminal Bonds Series 1 and 2; and $534,911,000 Consolidated Bonds, Series 1 through 19. The

Authority also had outstanding at November 30, 1961, $35,000,000 Series K Consolidated Notes due December 28, 1961, which will be refunded in part by proceeds of the current bond offering. The bonds now offered, like the outstanding Consolidated Bonds, are issued under and secured by the Consolidated Bond Resolution of 1952. Briefly, they are direct and general obligations of the Authority for the payment of principal and interest of which the full faith and credit of the Authority is pledged. They are secured equally and ratably with all the other Consolidated Bonds by a pledge of (1) the net revenues of the Authority from the Hoboken-Port Authority Piers, the Brooklyn-Port Authority Piers, the Port Authority-West 30th Street Heliport, the Erie Basin-Port Authority Piers, The Elizabeth-Port Authority Pier (under construction), the Port Authority-Downtown Manhattan Heliport, and any additional facilities which may hereafter be financed or refinanced in whole or in part through the medium of Consolidated Bonds, (2) the Port Authority's existing six bridges and tunnels, two union motor truck terminals, bus terminal, grain terminal, and Inland Terminal No. 1, subject only to the pledge heretofore made of such revenues in favor of General and Refunding Bonds, (3) the Port Authority's existing four air terminals, subject to the pledge heretofore made of such revenues in favor of Air Terminal Bonds, (4) Port Newark, subject to the pledge heretofore made of such revenues in favor of Marine Terminal Bonds, (5) the General Reserve Fund of the Authority equally with other obligations of the Authority, and (6) the Consolidated Bond Reserve Fund established in connection with Consolidated Bonds.

Debt Service Requirements: The Authority's bonds are partly serial and partly callable term bonds redeemable

Excerpt from Exhibit P-1

according to their terms from mandatory sinking fund payments. Serial maturities and sinking fund payments extend to 1991. After peak total debt service of $42,161,000 in 1962, including requirements on the bonds now offered, debt service trends downward gradually over the life of the bonds with only minor exceptions. Debt service requirements over the next 10 years, including amortization and interest, are shown in Table 1.

Coverage for Debt Service: The Authority's earnings provide ample coverage for debt service on all bonds, including those now offered. Net revenues in 1960 totaled $73,970,000, including income on investments and after security valuation adjustments, and covered interest payable in 1960 5.57 times and principal and interest 2.40 times. Net operating revenues, before income on investments and security valuation adjustments, totaled $62,682,000 and covered interest payable in 1960 4.72 times and principal and interest 2.04 times. Net operating revenues in 1960 would provide coverage on maximum interest payable in 1962, including the new issue, 3.01 times and on maximum total debt service payable in 1962, 1.49 times. Net operating revenues for the 12 months to September 30, 1961, would provide coverage on maximum interest 3.06 times and maximum total debt service 1.52 times.

Facility Usage: Traffic using various of the Authority's facilities is shown in Table 2, in each case for the last three twelve month periods ending September 30. For the 12 months ending September 30, 1961, vehicular traffic on the bridges and tunnels was down 2.0%, air passenger traffic was down 2.6%, plane movements down 5.2%, number of marine vessels up 5.0%, and waterborne tonnage down 1.9%. A number of factors account for these trends, but probably the most important single cause of the declines

Excerpt from Exhibit P-1

was the economic recession that dominated much of the 12 month period to September 30, 1961. Bad weather early in 1961 also depressed traffic at many of the facilities. In the case of some individual facilities, such as LaGuardia Airport, declines also reflect shifting traffic patterns within the area, in this case because of rehabilitation of the facility. Declines in the number of plane movements additionally are accounted for by airline utilization of larger planes. In any case the declines during the period were overall moderate in extent and temporary in duration. With the general upturn in business conditions, facility usage can be expected to resume an upward trend.

Financial Operations: Financial operations of the Authority over the last three calendar years, 1958 through 1960, were discussed in our report on the Authority dated April 20, 1961. Financial operations for the last three 12 month periods ending September 30, 1959 through 1961, are shown in Table 3.

Financial Position: The Authority's fund position remains strong. At the end of 1960 the Authority showed over $1.0 billion invested in facilities, against which it had funded debt totaling $610,827,000. Reserve funds totaled $79,065,000, distributed by fund as follows: General Reserve Fund, $61,082,000; Special Reserve Fund, $12,512,000; Air Terminal Reserve Fund, $4,468,000; and Marine Terminal Reserve Fund, $1,001,000. At December 31, 1960 the Authority showed total assets of $1,214,095,000, up from $1,112,476,000 at the end of 1959. The financial position of the Authority at September 30, 1961, as reported in its quarterly statements, is briefly summarized in Table 4.

Additional Facilities: The Authority is currently engaged in studies for improvements and other new construction

Excerpt from Exhibit P-1

in addition to programs now in progress. Among these are the following: (1) The Authority made a definitive report to the Governors and Legislatures of the two states in May 1961 indicating a need for an additional major airport to serve the future needs of the metropolitan area. No positive action has been taken. The Authority has no present power to construct or acquire such a facility, if it is to be located outside the Port of New York District nor to acquire any real property for a new airport at any location. (2) The Authority submitted a report dated March 10, 1961, to the Governors of New Jersey and New York and the Mayor of New York City "for their consideration and determination of any further action they may wish to direct toward the establishment of a World Trade Center in the Port of New York." The study found a proposed World Trade Center economically feasible and proposed redevelopment of a 16 acre site in lower Manhattan to house public and private agencies involved in international commerce. New York enacted legislation in 1961 to permit effectuation of this program and acquisition by the Authority of the Hudson & Manhattan Railroad, provided New Jersey enacted identical legislation. New Jersey enacted legislation permitting acquisition of the H&M but failed to include legislation pertaining to the World Trade Center. Recent press reports indicate that New Jersey is regarding much more favorably the proposal to tie the two projects together as a single undertaking but with the change that the World Trade Center be moved from the Lower East Side of Manhattan to the Lower West Side. The site under consideration includes and is adjacent to the present H&M terminal and buildings. (3) The Authority is studying the possibility of acquiring and improving the Hudson & Manhattan Railroad Company. As noted, the Authority has no power to proceed with this project,

Excerpt from Exhibit P-1

or with the World Trade Center, without authorizing legislation from both states. The Authority has stated that upon due statutory authorization it might be able to sell bonds for such acquisition if investors could be given contractual assurance with statutory protection that its General Reserve Fund could not be applied to commuter rail transit deficits beyond those of the present and existing Hudson & Manhattan Railroad. It has specified additional protections necessary to insure financial soundness of the undertaking. (4) New York State has appropriated $20,000,000 to the Authority to be used in purchasing commuter railroad cars for the purpose of renting them to commuter railroads operating between municipalities in New York State. The legislation was effective September 21, 1959, and the program has approval of both states. The Port Authority could not borrow money for the purchase of such cars, however, until New York State guaranteed payment of principal and interest on the bonds. Even after authorization, the Port Authority may pledge to the payment of the bonds only the railroad cars purchased, the rentals on them, and the State liability on its guarantee. The New York Constitution was amended in 1961 to permit the New York guarantee. The Authority expects to requisition the money appropriated by New York as it is needed and hopes further to encourage a concurrent program, financed from private investment sources, to maximize the number of cars that can be purchased. The Authority expects to issue the bonds described to repay the State's appropriation and/or refund the private financing. The Authority has entered an agreement with New York Central Railroad to initiate this program, which will commence with the purchase of 53 commuter cars at a cost of over $8.1 million.

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Excerpt from Exhibit P-2

DUN & BRADSTREET, INC.

MUNICIPAL CREDIT REPORT

December 14, 1962 Revenue Service

New Issue Report: Sale 12-19-62
THE PORT OF NEW YORK AUTHORITY

Prospects: SUPERIOR. The Port of New York Authority is a financially strong, multi-purpose, bi-state agency with a long list of accomplishments. As the Authority has consolidated its financial strength and expanded its activities, it has increasingly been faced with conflicts with opposition groups in the Port District; and its public relations has become a matter of increased importance. But the Authority has highly competent management, which works within the objectives of the bi-state Compact and within the scope of authorizing legislation of the States of New York and New Jersey. The Authority continues to draw heavily on its ample earnings and on borrowed funds to finance extensive programs of capital improvements. The second deck of the George Washington Bridge was opened August 29, 1962, although additional construction work on the approaches remains to be completed. Other programs now under way include construction of a bus station in the Washington Heights section of Manhattan as a part of the George Washington Bridge improvement, redevelopment of LaGuardia Airport, continued development of New York International Airport, improvements of Newark Airport, development and improvement of the Brooklyn-Port Authority Piers, Port Newark, and the Elizabeth-Port Authority Piers, and enlargement of the Port Authority Bus Terminal and its

Excerpt from Exhibit P-2

approaches to the Lincoln Tunnel. Also the Authority is authorized to proceed with and is working toward construction of a World Trade Center in lower Manhattan estimated to cost about $270 million, and in conjunction with this project it has acquired the Hudson Tubes, an interstate electric railroad, having taken over this operation September 1, 1962, under a wholly-owned subsidiary corporation, Port Authority Trans Hudson Corporation (PATH). This is expected to continue as a deficit operation, but safeguards have been established to prevent dilution of security of the Authority's bonds. The Authority has also launched its program of purchasing commuter railroad cars for commuter railroads operating between New York State municipalities; these bonds, however, are guaranteed by the State of New York and the entire program is insulated from the rest of the Authority's financial structure.

Bond Sale: The Authority is offering for public sale a total of $25,000,000 Consolidated Bonds, Twenty-Second Series (First Installment) on December 19, 1962. Details of the bond sale are shown in Table 1.

Bonded Debt: As of November 30, 1962, the Authority had outstanding funded debt in the amount of $732,837,000 (excluding the State-guaranteed Commuter Car Bonds), and total debt including the current offering will amount to $757,837,000. The outstanding debt at November 30, 1962 included $44,987,000 General and Refunding Bonds, Series 8 through 11 and Series 15; $62,829,000 Air Terminal Bonds, Series 1 through 3; $7,276,000 Marine Terminal Bonds, Series 1 and 2; and $617,745,000 Consolidated Bonds, Series 1 through 21. By the Consolidated Bond Resolution of 1952 the Authority covenanted that no additional General and Refunding, Air Terminal or Marine

Excerpt from Exhibit P-2

Terminal Bonds would be issued, and since that time the Authority has made substantial progress toward converting the form of its debt into the Consolidated Bonds, 84% of the total bonded debt being in this category at November 30. Security for the Consolidated Bonds is described in Table 1.

Debt Service Requirements: The Authority's bonds are partly serial, and partly callable term bonds redeemable according to their terms from mandatory sinking fund payments. Serial and sinking fund payments extend out to 1993. Including requirements on the bonds now offered, total debt service is at a high of $44 million to over $45 million 1963 through 1975, the estimated peak falling in 1969 in the amount of $45,736,000. Requirements decline gradually out to the mid-1980s and thereafter decline sharply, an arrangement well designed to permit scheduling of additional bond issues.

Coverage for Debt Service: The Authority's earnings provide wide coverage on its debt service requirements. Net revenues for the 12 months ended September 30, 1962, totaled $75,874,000, which covered interest for that period by 4.83 times. Net revenues for this 12-month period would cover estimated maximum future interest due in 1963 3.18 times and estimated maximum total debt service due in 1969 by 1.66 times. This computation does not take into account growth of revenues through increased usage of the Authority's facilities or growth to be expected from opening of new or expanded facilities.

Facility Usage: For the 12 months ended September 30, 1962, vehicular traffic on the Authority's bridges and tunnels increased 6.1% over the comparable 12-month period in 1960-61. Air passenger traffic at the three commercial

Excerpt from Exhibit P-2

airports increased 10.4%, and the total of plane movements at the four airports (including Teterboro) rose 8.1%. Marine terminal traffic declined 4.7%, although waterborne tonnage registered a slight gain of 1.9% (See Table 5). Factors accounting for the changes in the Authority's traffic and usage were the economic recession that dominated the first half of 1961, bad weather early in that year, and shifting traffic patterns in the area necessitated by the expansion and improvement programs.

Financial Operations: The Authority's gross operating revenues have shown upward trends into 1962; for the 12 months ended September 30, 1962, gross operating revenues amounted to slightly less than $132.0 million. After deduction of operating expenses, net operating revenues amounted to $71,158,000, and with the inclusion of interest earned on investments, total net revenues were $75,874,000. Net operating revenues for this period equalled 53.9% of gross operating revenues (See Table 4).

Financial Position: The Authority maintains a strong fund position. At the end of 1961, the Authority had over $1.1 billion invested in facilities, while funded debt totaled $626,093,000. Debt retired through the end of 1961 amounted to $538,630,000. Reserve funds at December 31, 1961, totaled $82,412,000, made up of $62,609,000 in the General Reserve Fund, $13,305,000 in the Special Reserve Fund, $5,376,000 in the Air Terminal Reserve Fund, and $1,121,000, in the Marine Terminal Reserve Fund. Total reserves were held $81,588,000 invested in securities and $824,000 in cash.

Additional Programs: The Authority is proceeding with certain additional programs which it is authorized to undertake by legislation enacted by the two states. Most

Excerpt from Exhibit P-2

prominent of these are the proposed World Trade Center and the Hudson Tubes operations.

World Trade Center: The Authority has the power to proceed with this program under identical authorizing legislation passed by New York and New Jersey. This center would be an integrated facility of commerce in the lower west side of Manhattan on a site encompassing the present site of the Hudson Terminal buildings generally in an area bounded by Church Street, Liberty Street, Vesey and Barclay Streets and the Hudson River. It would bring together the government and other agencies concerned with the movement of World Trade cargo through the Port of New York. The present estimated capital cost of the program is $270 million. The Commissioners of the Port Authority have indicated that they will proceed with this facility only after establishing that it would produce revenues sufficient with adequate margin to cover annual operating and debt service costs beginning after a reasonable development period. It is expected the facility would be financed by Consolidated Bonds.

Hudson Tubes Facility: On August 28, 1962 the Interstate Commerce Commission issued a certificate authorizing acquisition and operation of the Hudson Tubes by PATH. On September 1, 1962 pursuant to order of the New York County Supreme Court, in a condemnation proceeding, title was vested in PATH to the Terminal Buildings at 30 and 50 Church Street in New York City and the balance of the railroad system formerly operated by the Hudson & Manhattan Railroad; excluded from the acquisition were property interests of other railroads, such as the Journal Square Station in Jersey City and the

Excerpt from Exhibit P-2

trackage between Jersey City and Newark. PATH and the Pennsylvania Railroad Corporation, however, entered into an agreement for continued operation of joint-train service on the same terms as the former agreement between H&M and PRR. The agreement runs to February 28, 1963. PATH commenced operations September 1, 1962.

It is expected that the program for acquiring the properties, modernizing the power and signal systems, and acquiring new cars will cost in excess of $100 million. The operation is expected to involve a continuing annual deficit for operations and debt service of about $5 million. Plans for extension of the facilities expect to enlarge the deficit. The General Reserve Fund or other available revenues or reserves are applicable to these deficits under limitations described below.

The Authority's present plans call for demolition of the Hudson Terminal buildings, replacement of the terminal, and modernization of the trackage. Preliminary plans are being made for possible developing of a new Hudson Tubes station in Jersey City.

Covenant Against Security Dilution: Recognizing the deficit nature of the Hudson Tubes operation, the Authority urged the legislatures of the two states to incorporate protective features to prevent impairment of the Authority's credit. In general the protection contained in the legislation prohibits the application of any revenues or reserves pledged to the Consolidated Bonds for additional commuter railroad purposes beyond the original Hudson Tubes, unless the Port Authority shall have first certified the eligibility. To be eligible the Authority must determine either that the proposed facility is self-supporting, or if not, that at the end of the preceding calendar year the General Reserve Fund contained the full

Excerpt from Exhibit P-2

statutory amount and that for the ensuing 10 years the estimated average annual deficits of the proposed additional commuter facility and any then existing Port Authority commuter facility would not exceed an amount equal to 1/10 of the amount in the General Reserve. Certain adjustments in this figure are provided by statute to prevent the enlargement of deficit capacity, and the limiting figure may be enlarged to the extent of state subsidies for commuter railroad purposes.

Litigation: On June 26, 1962, a suit was commenced against the Authority to declare the Hudson Tubes-World Trade Center legislation unconstitutional and to enjoin the Authority from proceeding. The latter motion was denied July 17, 1962; condemnation proceedings were authorized on July 26, 1962. Further argument is being heard in the present term of the Appellate Division. Bonds now offered are stated to be not affected by these matters.

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Exhibit P-3

Memo To: William H. Morton
Robert R. Krumm

From: John F. Thompson

PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

Extended Comment

The much discussed 1962 Covenant was embodied in concurrent statutes adopted by the New Jersey and New York legislatures which authorized and provided for construction by the Authority of the World Trade Center and which provided for the takeover of PATH. Section 6 in each of the statutes reads as follows:

> "The two states covenant and agree with each other and with the holders of any affected bonds, as hereinafter defined, that so long as any of such bonds remain outstanding and unpaid and the holders thereof shall not have given their consent as provided in their contract with the port authority . . . (b) neither the states nor the port authority nor any subsidiary corporation incorporated for any of the purposes of this act will apply any of the rentals, tolls, fares, fees, charges, revenues or reserves, which have been or shall be pledged in whole or in part as security for such bonds, for any railroad puposes whatsoever other than permitted purposes hereinafter set forth."

Permitted purposes include the Hudson Tubes, certain freight transportation and terminal facilities, self-supporting facilities, or facilites with permitted deficits. The

Exhibit P-3

permitted deficits are based on estimates by the Port Authority of revenues and expenditures for the ensuing ten years. The deficit of PATH is to be included. The aggregate annual deficit from passenger railroad facilities as so estimated shall not exceed 1/10 of the amount in the General Reserve Fund. There is an alternative limiting figure, namely, 1% of the total amount of bonds retired from revenues by the Authority plus the General Reserve Fund, but this is still the smaller of the two alternatives. At the end of 1973 the General Reserve Fund totaled $173.5 million plus, so the permitted estimated annual deficit would be $17 million. The deficit of PATH alone in 1973 was "more than" $20 million, so there is obviously no room here.

The provisions of Section 6 quoted above are part of the contract with holders of bonds issued between March 27, 1962 and May 10, 1973. It is generally believed by municipal bond attorneys and others familiar with this matter that the outright repeal of this section would constitute a forbidden impairment of the obligation of contracts under the federal constitution. This was one of the reasons that Governor Cahill opposed the outright repeal. If repeal were nevertheless attempted there is little doubt that litigation would be instituted on behalf of bondholders. Such litigation might well continue over a period of years, holding up Port Authority financing and projects as a result.

A second unfortunate result of attempted repeal would be the indirect effect on the credit of the two states. Through its various agencies New York State has outstanding some $4.5 billion of bonds issued by its agencies which are dependent to an unusual degree on the good faith of the state. A similar additional amount is anticipated during the years immediately ahead for state sponsored projects. Investors would consider the repeal of this covenant as evidence of bad faith on the part of the state;

Exhibit P-3

this could increase the difficulty and cost of financing these additional projects.

In New Jersey a large project has recently been financed only after addition of a reserve makeup provision commonly spoken of in the marketplace as a moral obligation. The bonds in question are not yet fully distributed. A recent article in the Commercial and Financial Chronicle suggests that holders of these bonds may, because of Governor Byrne's proposal to repeal the Port covenant of 1962, question the value of the state's moral pledge on the sports complex bonds.

Along with the pressure to repeal the covenant there are exaggerated statements about the reserves and earnings of the Port Authority which, without the covenant, could be available for mass transit purposes. If we examine the operations of the Port Authority for the last several years the annual net revenues after paying debt service on the consolidated bonds have been $70 to $75 million. This is before interest and repayments on the bank loans, which have required a major portion of net income for several years, and would continue to require most of it through 1979. This net income is a significant and impressive amount when it is considered within the framework of the current operation and debt service requirements of the Port Authority. Together with the reserve funds it provides strength and stability to the Port Authority's financial position, and its credit standing.

But if it is to be considered in the framework of the mass transit problem in the metropolitan area it becomes a very small amount. Officials recently stated that $100 million would carry the deficit of the New York City transit system only from January 1 to May 1. During the past year final legislative authorization was given to plans for rail mass

transportation improvement previously announced by Governors Rockefeller and Cahill and the Port Commissioners. Included are rail connections with Kennedy and Newark Airports (and thence to Plainfield, New Jersey), and connections facilitating direct rail access from New Jersey to Penn Station. The plans anticipate substantial federal and state capital grants, and assignment of operating deficit risks to other agencies, so that the projects can be certified as in compliance with the 1962 covenant. If the Port Authority's financial strength and credit position are to be maintained, the realities of its financial position limit incursion into the mass transit field as much as does the 1962 covenant, and the announced program presses that limit. The burden of proof is on those who push for more.

Recent assertions that mass transit development was the purpose for which the Port Authority was created are an attempt to revise history. The basic original purpose did involve transportation, that of commerce in and out of the Port of New York from other areas both foreign and domestic. The concept was for the two states to work jointly in Port developments. It was a number of years later that the Port Authority, being the most convenient bi-state body, was given the authority and responsibility for the various bridge and tunnel crossings between the states. In fact the first tunnel, the Holland Tunnel, was built by another authority and eventually refinanced and turned over to the Port Authority. On the other hand the marine terminal development has been quite in line with the Port's basic original purpose and would have been much more extensive had it not been for the obdurate attitude of the New York City government in the immediate post-war years when these developments were getting underway. Given the shift to air transportation the airport development is certainly in line with the Port Authority's original purposes. Despite all the criticism of the World Trade Center, the courts

have held that this project is a valid Port Authority purpose.

The Port Authority has been authorized and directed by the two states in each and every project undertaken, and except for PATH, the projects were expected eventually to support themselves with their own revenues. Overall the Port Authority has been expected to operate as a public business agency with revenues from the services it provides being its only source of funds. It has neither taxing power nor any kind of so-called moral obligation or reserve makeup provision providing indirect state support for its debt.

There is a wide body of opinion that in present circumstances, especially because of energy and environmental problems, government should step in to discourage auto traffic into major urban centers in favor of the greater use of mass transit. Because of its bi-state character, its efficiency in building and operating the projects it has undertaken, together with an unreal view of the relation of its earnings and resources to the needs of mass transit in the area, the Port Authority has become a focal point of demands on this score. It is submitted here that this is inappropriate. The Port Authority has functioned for the two states to finance and operate public facilities which on the whole could be supported by their own revenues. In carrying out this assignment it has to some degree used the automobile tolls from the Hudson crossings as a back-up in getting other projects underway. But if there is to be a significant shift of funds from charges imposed on automobile traffic to the support of mass transit this should be done by the two states themselves; to do this is an exercise of the state police power and taxing power. As such it should apply to all automobile traffic into Manhattan whether using the free City bridges or the Hudson crossings.

Excerpt from Exhibit P-4

(Draft memo dated 4/27/72 by John F. Thompson)

PORT OF NEW YORK AUTHORITY

Mass Transportation vs. Bondholders Security.

In 1962 concurrent statutes were adopted by the New Jersey and New York legislatures providing for the World Trade Center, for the take-over of PATH, and also providing restrictions on future activity of the Port Authority in the railroad field. These restrictions are found in sections six in each of the statutes. Here the two States covenant; (1) not to diminish or impair the power of the Port Authority to establish, levy and collect rentals, tolls, fares, fees or other charges for facilities of which the revenues have been pledged to the bonds; and (2) that the Port Authority will not apply any such revenues for "any railroad purposes whatsoever other than permitted purposes hereinafter set forth." Permitted purposes include the Hudson Tubes, certain freight transportation and terminal facilities, self-supporting facilities, or facilities with permitted deficits. The permitted deficits are based on estimates by the Port Authority of revenues and expenditures for the ensuing ten years. The deficit of PATH is to be included. The aggregate annual deficit from passenger railroad facilities as so estimated shall not exceed 1/10 of the amount in the General Reserve Fund. There is an alternative limiting figure, namely, 1% of the total amount of bonds retired from revenues by the Authority plus the General Reserve Fund, but this is still the smaller of the two alternatives. At the end of 1971 the General Reserve Fund totaled $144 million plus, so the permitted estimated annual deficit would be something over $14 million. The deficit of PATH alone in 1970 was $13 million and in 1971 was reported to be $16 million, so there is obviously no room here at all.

Excerpt from Exhibit P-4

The text of the discussion of the covenant against additional passenger railroad deficits from the most recent official statement is attached hereto, as is the text of section six of the 1962 concurrent acts of the two legislatures.

The present covenant to charge adequate tolls and other charges is found in section 12 subdivision F of the Consolidated Bond Resolution and reads as follows: "To establish and collect flight fees, wharfage, dockage, rents, tolls and other charges in connection with facilities the net revenues of which are pledged as security for Consolidated Bonds, to the end that at least sufficient net revenues may be produced therefrom at all times to provide for the debt service upon all Consolidated Bonds."

Turning to the possibility that the bondholders be approached for a modification of the Resolution, the procedure to obtain such modification is found in section 16 of the Consolidated Bond Resolution adopted October 9, 1952. The text of this procedure for modifications is also attached hereto. This procedure requires that a *meeting of the holders* of consolidated bonds be called for the purpose of considering any such proposed amendment, repeal or modification. Broad publication of the notice of such a meeting is required,—once a week for four weeks in papers not only in New York but also in Boston, Philadelphia, Chicago and San Francisco. Notices are also to be mailed to the holders of registered bonds. To qualify to vote at such a meeting the holder of a consolidated bond or his proxy must present at the meeting his bond or bonds, or a certificate of ownership from a Registrar or such Bank or Trust Company satisfactory to the Authority as has accepted such bonds against receipt and certificate of ownership, which shall entitle the holder to vote at the meeting. 60% of the aggregate principal amount of outstanding consolidated bonds, exclusive of Authority-

Excerpt from Exhibit P-4

owned bonds, is necessary to constitute a quorum at the meeting. Approval of the proposed modification also requires the consent of 60% of the aggregate principal amount of the bonds. The modification is in the form of a proposed resolution presented at the meeting. Voting at the meeting shall be by ballot. There are provisions that the meeting may be adjourned from time to time in order to obtain a quorum, but at some point it appears that holders of at least 60% of the outstanding bonds either in person or by proxy must be present at the meeting and vote favorably for the modification.

The percentage approval required is lower than that for the Triborough, but the meeting procedure adds further complexity and difficulty to the process of obtaining approval. In my opinion an approach to the bondholders for a modification of the 1962 restrictions accompanied by a moderate increase in interest rate on their bonds would fail, partly because it would be unacceptable and partly because of the procedural difficulties.

It is suggested that in the alternative consideration be given to measures assisting mass transportation which can be developed within the present framework and covenants with the bondholders. One such proposal would be concurrent action by the States to place an override toll of 50% or more on the tolls now collected for the tunnels and bridges. This additional toll revenue could be turned over to the States in such proportion and on such terms as agreed to for use in assisting mass transit facilities. It could be said of course, that the added toll would reduce the traffic on these facilities somewhat and therefore reduce the revenue from the present tolls which is pledged to payment of the bonds. As an answer to this it could be provided that some part of the override toll proceeds be

Excerpt from Exhibit P-4

pledged to insure that gross pledged revenues from tolls not decline. The base could be total tolls collected in the most recent year, or an average of several years. Such an arrangement could protect the bondholders' rights on a realistic and fair basis, and at the same time provide for assistance to mass transit.

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Exhibit P-5

[LETTERHEAD OF]
W. H. MORTON & CO.

June 10, 1974

Mr. Norman T. Hurd
New York State Executive Office
1350 Avenue of the Americas
New York, New York 10019

Dear Mr. Hurd:

All in the group who met in your office on Friday to discuss the adverse effect of repealing the 1962 Port Authority covenant join me in thanking you for your courtesy and consideration. As in any such discussion a few after thoughts occur which were not expressed at the time, and we would like to share these with you.

We are less than impressed by the "unanimous vote" in the legislature. Some of us fully understand the short roll call on the first run through of a day's calendar and feel that the "vote" indicates no more than a passive acquiescence in a leadership decision to "leave it to the Governor."

It is true that the impact on the "moral obligation" financing after Governor Rockefeller signed the 1972 repeal bill was minimal. However the conciliatory message and the fact that Governor Cahill was not persuaded to support retroactive repeal provided a setting far different from that today when Governor Wilson's action will be final and decisive.

Concerning the New Jersey Sports Complex financing, we fully agree about the impact of its questionable public purpose. It should also be said, however, that no one we know in the investment community believes the issue could

Exhibit P-5

have been sold at all if Governor Byrne had recommended repeal of the Port Authority covenant a week before instead of a week after the date of the sale, — this because of the impact on investor evaluation of the State's moral pledge.

If the New York repeal bill is vetoed there will be a continued effort in the investment community working with the Port Authority to further its involvement in mass transit within the covenant, including a possible request for bondholder consent to change. If the repeal bill is signed, however, all of this potential effort will unfortunately have to be channeled into the mobilization of investors to uphold the covenant in the long constitutional court battle which will ensue.

Again, please accept our thanks for the courtesy you accorded us in Friday's meeting.

Sincerely yours,

JOHN F. THOMPSON
President
The Municipal Forum of New York

JFT:me

cc: Mr. Alan Weeden
Mr. Truxton B. Pratt, Jr.
Mr. Amos T. Beason
Mr. R. Fenn Putman

Exhibit P-7

THE DAILY BOND BUYER
FRIDAY, MAY 17, 1974

MUNICIPAL BOND CLUB OF NEW YORK
EXPRESSES CONCERN ON REPEAL

The following statement was issued yesterday by the Municipal Bond Club of New York:

"The Municipal Bond Club of New York wishes to express its deep concern regarding recent events affecting the Port Authority of New York and New Jersey. On April 30, 1974, Gov. Brendan T. Byrne signed legislation removing a covenant between the State and the Authority's bondholders. Such covenant, granted in 1962, provides certain limitations regarding the Authority's activities in commuter railroad projects. Within the same week, both legislative houses of the State of New York also approved passage of a parallel bill.

"Members of the Municipal Bond Club have relied on the Authority's representation regarding this covenant for the past 12 years, both in their capacity of underwriting the Authority's securities and in placing such securities with private and institutional investors. The removal of the covenant may very well be a breach of the bondholders' contract and adversely affects the investment quality of the Authority's securities. It is the opinion of a substantial majority of the Municipal Bond Club's membership that the Authority will be restricted in its ability to finance any of its projects until the situation regarding the covenant is resolved, either by judicial decision or by legislative reinstatement of the covenant.

"That additional extended and/or improved commuter railroad projects are needed in New Jersey and New York

Exhibit P-7

is recognized by the Municipal Bond Club membership. The membership is confident, however, that other ways exist for the Port Authority to finance such facilities without jeopardizing the Authority's future ability to finance all aspects of its programs or cause a monetary loss to those who have provided funds in the past for the Authority's presently existing facilities. The 1962 covenant foresaw potential future need for additional commuter railroad facilities and permits the issuance of Authority bonds for such purposes, subject to initially discharging certain financial responsibilities meeting certain financial tests.

"Especially in the light that removal of the covenant apparently is not required to accomplish the goal of providing needed commuter facilities, the Municipal Bond Club has a deep apprehension concerning other programs of the two States. Specifically, if the two States, in harmony, can remove a portion of a contract as strong as a covenant, it puts in doubt the so-called "moral pledge" placed upon hundreds of millions of bonds issued by agencies of the State of New Jersey and placed upon billions of bonds issued by agencies of the State of New York.

"We have a very real and strong concern regarding the already realized loss in market value of the Authority's bonds which our members, in good faith and reliance on the Authority's statements and on the two States' contractual commitments, have sold to investors. We also are very much concerned about the future financing capabilities not only of the Authority, but of many other agencies of each of the States of New Jersey and New York."

Exhibit P-10

SECURITIES INDUSTRY ASSOCIATION
NEWS RELEASE

contact: Bruce M. Spence
Director of Public Finance
Securities Industry Association
(212) 425-2700

FOR IMMEDIATE RELEASE

NEW YORK, N.Y., May 15—The following statement was issued today by the Public Finance Council of the Securities Industry Association:

The Public Finance Council of the Securities Industry Association deplores the action taken by the legislatures of New Jersey and New York to repeal the 1962 Covenant concerning Port of New York Authority expenditures for rail mass transit. In 1962 concurrent legislation adopted by the States authorized the World Trade Center and the takeover of the Port Authority Trans-Hudson (PATH), and included the following in Section 6: "The two states covenant and agree with each other and with the holders of any affected bonds" . . . that no pledged revenues shall be applied . . . "for any railroad purposes whatsoever other than permitted purposes." This covenant served to maintain the strong credit standing and the borrowing power of the Port of New York Authority, and $1.2 billion bonds were issued under it and sold to investors between March 1962 and May 1973.

The legal strength of State, Municipal and Authority credit over the years has been importantly based on (1) the rule that the statutes under which bonds are issued are an integral part of the bond contract and (2) Article I Section 10 of the Constitution of the United States which provides

Exhibit P-10

that "no State shall . . . pass any . . . Law impairing the Obligation of Contracts. . . ." The proposed repeal of the 1962 Covenant is a challenge to both, and thus constitutes a threat to the foundations of municipal credit generally. Repeal would doubtless be followed by extended litigation under the impairment clause, bringing Port Authority financing and projects to a halt.

Both of the States are heavy borrowers, and much of the borrowing for State projects is based on a debt service reserve make-up clause embodied in the statutes under which the bonds are issued. These bonds and their acceptance by investors are dependent to an unusual degree on the good faith of the State. Investor concern expressed to members of this council indicates that repeal will have an especially important adverse effect on this type of financing, and that none of the borrowing by New York and New Jersey will remain entirely unaffected.

Whatever public purposes are to be served, such as mass transit in this case, we are confident that more can be accomplished by working within the constraints of binding commitments than by adopting their unilateral revocation. Public credit depends in a large measure on the good faith of government officials and legislative bodies. Measures such as the proposed repeal are destructive of investor confidence and thus of public credit; the most certain effect is to impair the ability to finance future public projects.

Excerpt from Exhibit P-36

FINANCIAL CONDITION AND FUTURE PLANS
of
THE PORT OF NEW YORK AUTHORITY

By
AUSTIN J. TOBIN
Executive Director
THE PORT OF NEW YORK AUTHORITY

an address before

THE MUNICIPAL FORUM OF NEW YORK
THE MUNICIPAL BOND CLUB OF NEW YORK
AND THE BOND CLUB OF NEW JERSEY

April 4, 1962

• • •

"And now, as to the Hudson & Manhattan:

"The Authority's credit was built and rests today upon the confidence of those who buy our bonds that no project would ever be undertaken which, in the judgment of the Board, would impair the Authority's credit standing or weaken the investment status of our Consolidated Bonds. Any attempt to drain our revenues and reserves into the endless and increasing deficits of the commuter railroad systems of New York and northern New Jersey would obviously have violated this pledge, destroyed our credit and so ended our usefulness to the people of the Port District.

"Yet the rail commuter problem is of the most serious public consequence and throughout the years we have studied it ourselves, advanced funds for its study by others, and sought to find some area of the problem, or some basis for extending our help, or for such limited assistance as

Excerpt from Exhibit P-36

could be extended, without injury to our credit and within the intendment of our pledges and our financial commitments.

"Thus it was that the commuter equipment purchases in New York were financed by a combination of New York State advances, and now by special Port Authority securities guaranteed by the State of New York.* The State

* "In 1959, a plan was developed by the State of New York to provide financial assistance for the purchase of new railroad commuter cars to replace obsolete equipment now in service on the New York Central, New Haven and Long Island Railroads. This program sought to solve one of the major problems which prevent a more efficient and comfortable commuter railroad service in New York. The Port Authority was named to administer the program for the State.

"Under legislation enacted by the States of New York and New Jersey, the Port Authority is authorized to purchase the railroad cars for lease to the three railroads on behalf of the State of New York.

"The bi-state legislation authorizes the Port Authority to issue a special series of bonds to be known as "New York State Guaranteed Commuter Car Bonds," which will be guaranteed as to principal and interest by the State of New York.

"The New York Legislature on March 28 of this year gave final approval to a bill implementing the constitutional amendment that places $100,000,000 of New York State's credit behind the special bonds that will be used to finance the new rail commuter cars.

"Thus, while the Port Authority will issue these special bonds as agent for the State of New York, the Authority's credit, revenues or reserves are in no way involved or pledged, in whole or part, in this financing.

"The Port Authority has worked intensively with the railroads, the New York State Director of Transportation, car manufacturers, the Interstate Commerce Commission and other interested parties to complete the development of the program, including the development of design specificiations for efficient, economical and comfortable commuter cars.

"In May 1961, an $8,165,012 contract was awarded for the purchase of 53 electrically powered, air-conditioned commuter cars for use by the New York Central Railroad. The contract awarded to the Pullman-Standard Division of Pullman, Inc., provided for the delivery of all cars under the contract during 1962. The first car delivered

Excerpt from Exhibit P-36

Report upon which this program was based concluded that this arrangement was "necessary because the Port Authority has no revenues or reserves which can be applied to this purpose."

"Early last year, the Commissioners advised the New Jersey Legislature that if sound statutory limitations and assurances could be worked out, it would be possible for the Authority to finance the acquisition, modernization and operation of the Hudson & Manhattan Railroad. Vice Chairman James C. Kellogg, III, said to the Legislature:

> "On this estimate of the H&M's losses, and if we are able to satisfy prospective investors by statutory assurances that this proposal will not involve the Authority's General Reserve Fund in any other or further commuter deficit operations, ***we believe we can conscientiously certify, as we must under our indentures, that this financing will not impair the Port Authority's credit. . ."

"I think it is most significant to our bondholders to have been assured directly by the Governors of the States, and by the two State Legislatures, as they have been in the legislation just enacted, that the revenues and reserves on which bondholders have relied in the past are to be safeguarded in the future, and to be further assured by the two States that the Authority's limited participation in commuter rail transit will be kept within boundaries that will not impair the Authority's credit.

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under the program was formally dedicated in ceremonies at Grand Central Terminal by Governor Rockefeller on March 22.

"On February 28, 1962, a second lease was concluded by the Port Authority on behalf of New York State. This lease was with the Long Island Rail Road and provided for the purchase of a maximum of 60 commuter cars (generally similiar to the New York Central cars) by the Port Authority for lease to that railroad."

Excerpt from Exhibit P-36

"The limitation included in the H&M legislation constitutes a legally enforceable contract between the two States and our bondholders. The two States have pledged that Port Authority revenues and reserves will not be committed to H&M extensions or any additional commuter rail projects if our estimated deficits from such proposed rail projects, after debt service, together with the deficits of the H&M and any other commuter rail facilities for which the Port Authority General Reserve is pledged, would exceed an amount equivalent to ten per cent of the amount in the General Reserve Fund. I cannot overestimate the significance of this statutory guarantee. It protects the investment status of the Authority's outstanding bonds and gives assurance of the continuation of the Authority's sound credit position. For, under this guarantee, the two States have safeguarded the Authority's bondholders against dilution of their security by any additional deficit passenger rail facilities beyond the limits carefully spelled out in the statutes."

"Today, the Authority's General Reserve Fund totals $62,600,000. This means that, under the terms of the foregoing limitation, the Commissioners of the Port Authority cannot commit themselves to any extensions of the H&M or any other deficit passenger rail operation if any such extension, together with the existing H&M, would involve us in estimated annual losses beyond 6¼ million dollars. It appears that within a few years, because of our capital requirements and borrowings, the General Reserve Fund may be in the neighborhood of $100,000,000. At that stage, the limiting figure for commuter railroad deficits would be $10,000,000. Our present estimates indicate that the total deficit which we could incur in the

Excerpt from Exhibit P-36

operation of the Hudson & Manhattan Railroad, including additional transfer points in New Jersey, will fall within this statutory limitation. It should be noted also that, at that time, our forecast net revenues *after* mandatory debt service will be some $53 million.

"We believe that the Commissioners of the Port Authority will have no difficulty in holding their annual deficits on these Hudson & Manhattan operations within the prescribed limit of ten per cent of the General Reserve. In making the ten-year projections provided by the statute (i.e., for the initial statutory certification before we could increase our rail commutation involvement beyond the basic structure of the existing Hudson & Manhattan Railroad), allowances will, of course, be made for cost increases and other inflationary pressures. Furthermore, the States recognized the need to assure investors of the Port Authority's ability to control the commuter rail deficits for which it will be responsible and they, therefore, covenanted in the statute that a) they will vest in the Port Authority the sole authority to establish fares and to determine the quality and frequency of service, and b) provide that fares and the extent of service will not be reviewable by the state Public Service Commissions. Interstate fares will be subject to ICC reviews.

"The physical proposals for the Hudson & Manhattan tubes will be of particular interest for those of you who are Jersey commuters. The plan involves the complete replacement of the Hudson & Manhattan rolling equipment, except for the 50 newer cars which were purchased in 1958. We will replace the rest of their equipment, which is entirely obsolete, with about 250 new, fast, comfortable, air-conditioned cars. We will also have to renew the H&M's power system, signal system, switching and controls and certain trackage.

Excerpt from Exhibit P-36

"The combining of these two new projects also includes plans for a completely new terminal here in Manhattan, since we are tearing down the old Hudson Terminal Buildings, 30-50 Church Street. The reconstruction of the terminal will, incidentally, give us an opportunity to redesign the trackage there so as to modify the present restrictive curves that hamper operations in the present terminal.

"The general plan for the long-range improvement of the Hudson & Manhattan includes the provision of transfer stations in the Jersey Meadows which would provide a convenient transfer between the H&M and all of the northern New Jersey commuter railroads, except the Northern Branch of the Erie-Lackawanna. Under this plan, commuters from almost every point in northern New Jersey could transfer either to the Hudson & Manhattan for downtown destinations or to the Pennsylvania Railroad for midtown points.

"These two new projects will cost a great deal of money —at the present time, we estimate their total cost substantially in excess of $420 million. In the order of two-thirds of this amount will be devoted to the World Trade Center. That part of the financing will be based upon our conclusion and demonstration that the World Trade Center will be self-supporting and that our over-all operation, including all existing facilities, as well as the World Trade Center, will be sufficient to assure the continuance of our strong financial position and earnings record. The statutory limitation in the Hudson & Manhattan legislation which I have outlined will also assure our investors that this limited assumption of commuter deficits will be adequately safeguarded and contained.

"Beyond this particular statutory limitation, I think that I should briefly review the Port Authority's other and

Excerpt from Exhibit P-36

established financial pledges, commitments and contracts with bondholders, with which you are familiar but which, because of their importance to bond buyers, can always bear repetition.

"Essentially, Port Authority Consolidated Bonds—the only medium of financing used since 1952—are secured as follows:

1. By an irrevocable pledge of the net revenues of all the existing facilities, subject only to the lien of certain prior bonds which are no longer issuable and are in the process of being retired.

2. In addition, any net revenues of any year, which exceed what is required to meet interest and principal of bonds which have a first lien on the revenues, must be set aside in a General Reserve Fund and other specific reserve funds. This General Reserve Fund must by law receive all such surplus revenues required to maintain it in an amount equal to 10 per cent of the outstanding debt. The General Reserve Fund is pledged to the bondholder and is available to meet the principal and interest on his bonds in the event any year's revenues should not be sufficient.

"Furthermore, no additional Consolidated Bonds can be issued to raise new capital except upon compliance with an earnings test which requires maximum future annual debt service to be covered 1.3 times by net revenues.

"And finally, no new facility can be brought into the family of General Reserve Fund facilities by the issuance of additional bonds unless the Commissioners of the Authority first certify that the net revenue prospects of such new facility will not materially impair our sound

Excerpt from Exhibit P-36

credit standing or the investment status of Consolidated Bonds or our ability to fulfill our commitments to Consolidated Bond holders and others.

"Looking to our future financing, after 1962 and up to 1971, we estimate that we will require approximately $494,000,000 for the continuation of airport construction and reconstruction, for new piers, docks and marine terminals and for other necessary port facilities. Adding our financial requirements over this period for the two new projects, the World Trade Center and the Hudson & Manhattan, would indicate a total requirement of almost $1 billion. We estimate that we will be able to finance about 40 per cent of this through the medium of short-term notes due at the end of each year of issuance. If this pattern of our past financing is realized, then we should be coming to market over the years 1963-1971 for about $565,000,000 in long-term bonds. This would indicate an average of only $56,000,000 a year, though I should note that the timing of major construction expenditures will be weighted in the earlier years, in which our requirements will continue at the rate of about $100 million a year, with a rather sharp decline of new financing after 1968.

"Over the next ten-year period, our preliminary estimates indicate that our net revenues will average 1.85 times our mandatory debt service, and in only two years will we experience a coverage of less than 1.8 times.

"During this ten-year period, our debt service will almost double and move up to the $75,000,000 level. However, even at a coverage of 1.80, we will be earning about $60,000,000 in net revenues after mandatory long-term debt service. This, it seems to me, offers a considerable safety factor for our bondholders.

"We have asked the consulting engineering firm of Coverdale & Colpitts to review our own ten-year forecast,

Excerpt from Exhibit P-36

including our Hudson & Manhattan and World Trade Center figures. When we come to market in the fall, therefore, to begin the financing of these new projects, we will be able to give you the additional assurance afforded by such an outside economic audit of our own figures.

"As we go forward with our financing, the Port Authority's record, the earning power of our facilities and the strength of our reserves all testify to our ability to maintain and even improve our credit and, at the same time, to carry forward this tremendous and dynamic program of public improvements.

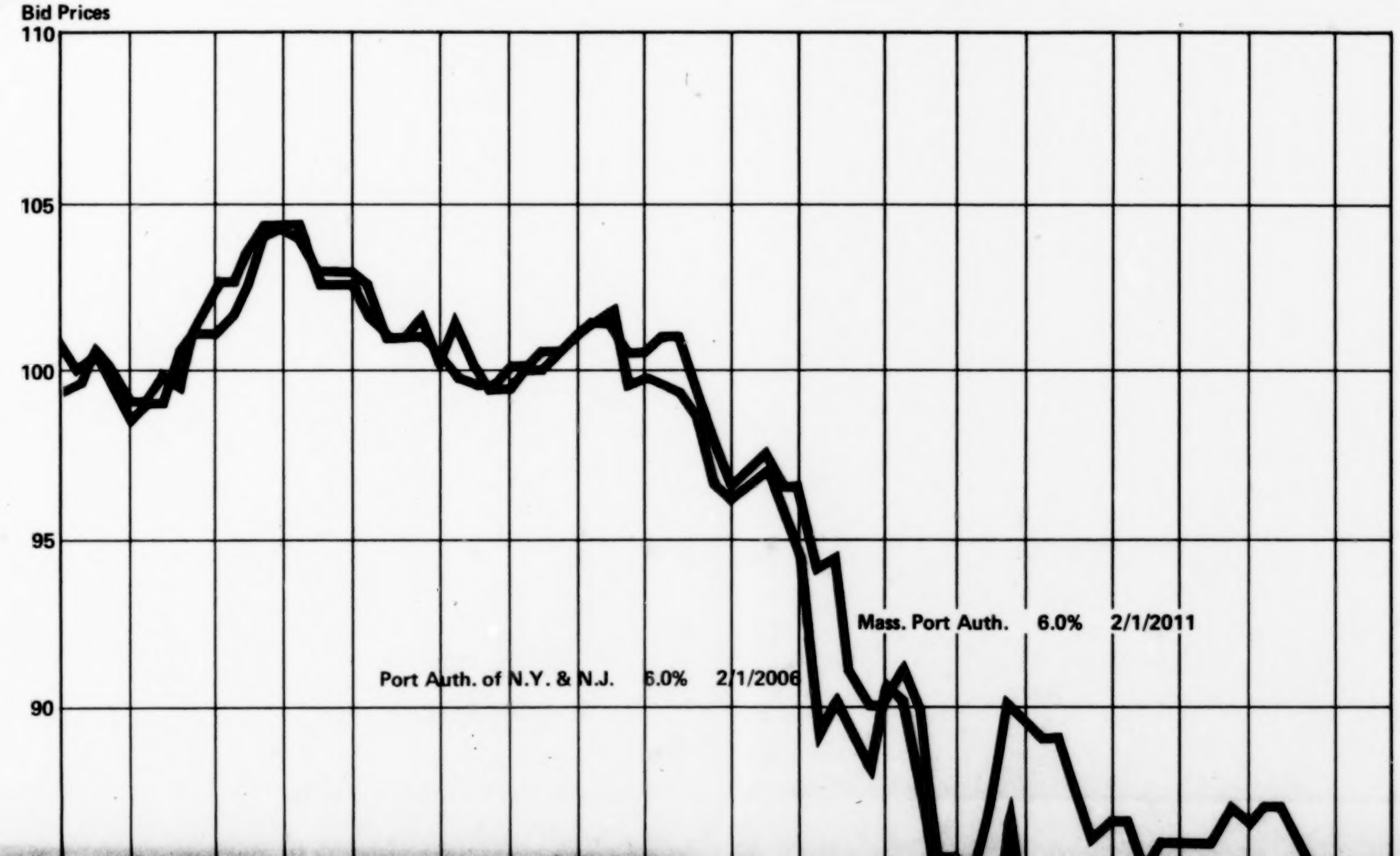
"In closing, I would ask particularly that of all the figures which have to be recited in an accounting such as this, you bear in mind our record of debt retirements—over $150,000,000 retired in the last three years alone, and no less than $374,000,000 of debt retired in the last ten years. I ask that you project that record in terms of our ability to carry forward the extensive program that I have outlined today—a program that will mean so much to the future welfare and prosperity of this great and growing Port District of New York and New Jersey."

Exhibit P-89

Exhibit P-89

COMPARISON OF DOLLAR PRICES

PORT AUTH. OF N.Y. & N.J. 6.0% 2/1/2006
MASS. PORT AUTH. 6.0% 7/1/2011



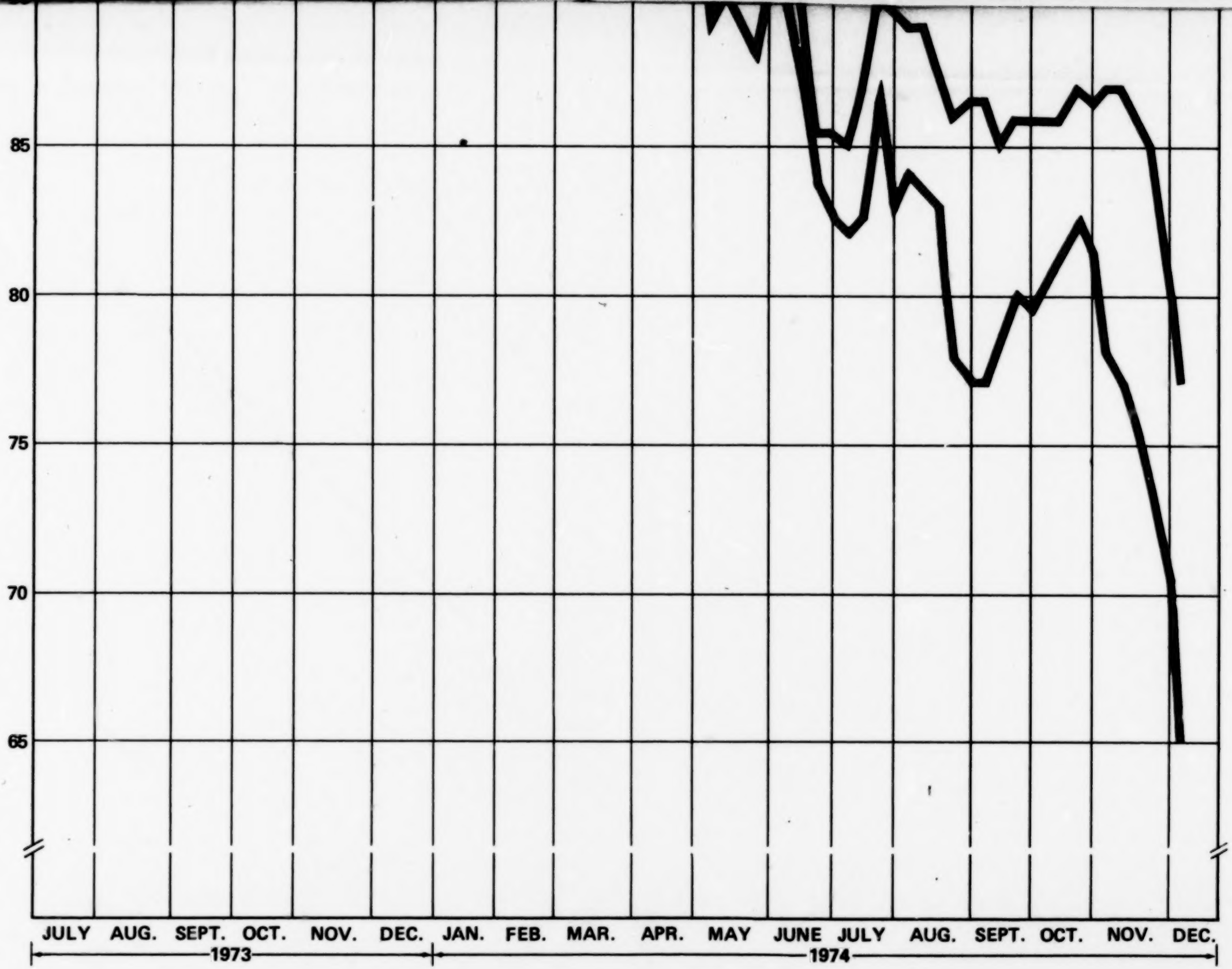

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Exhibit P-90

		Port Authorty of New York & New Jersey 6.0% 2/1/2006	Massachusetts Port Authority 6.0% 7/1/2011
1973	7/6	99¼	101
	7/13	99½	100
	7/20	100½	100½
	7/27	100	99½
	8/3	99	98½
	8/10	99	99
	8/17	99¾	99
	8/24	99½	100½
	8/31	101	101
	9/7	102½	101
	9/14	102½	101½
	9/21	103½	102½
	9/28	104½	104
	10/5	104½	104¼
	10/12	104½	104
	10/19	103½	103
	10/26	103½	103
	11/2	103½	103
	11/9	102½	102½
	11/16	101	101
	11/23	101	101
	11/30	101	101½
	12/7	100½	100
	12/14	99¾	101½
	12/21	99½	100
	12/28	99½	99½
1974	1/4	100	99½
	1/11	100	100
	1/18	100½	100
	1/25	100½	100½
	2/1	101	101
	2/8	101¼	101¼
	2/15	100¾	101¼
	2/22	99½	100½
	3/1	99¾	100½
	3/8	99½	101
	3/15	99¼	101
	3/22	98½	99½

Exhibit P-90

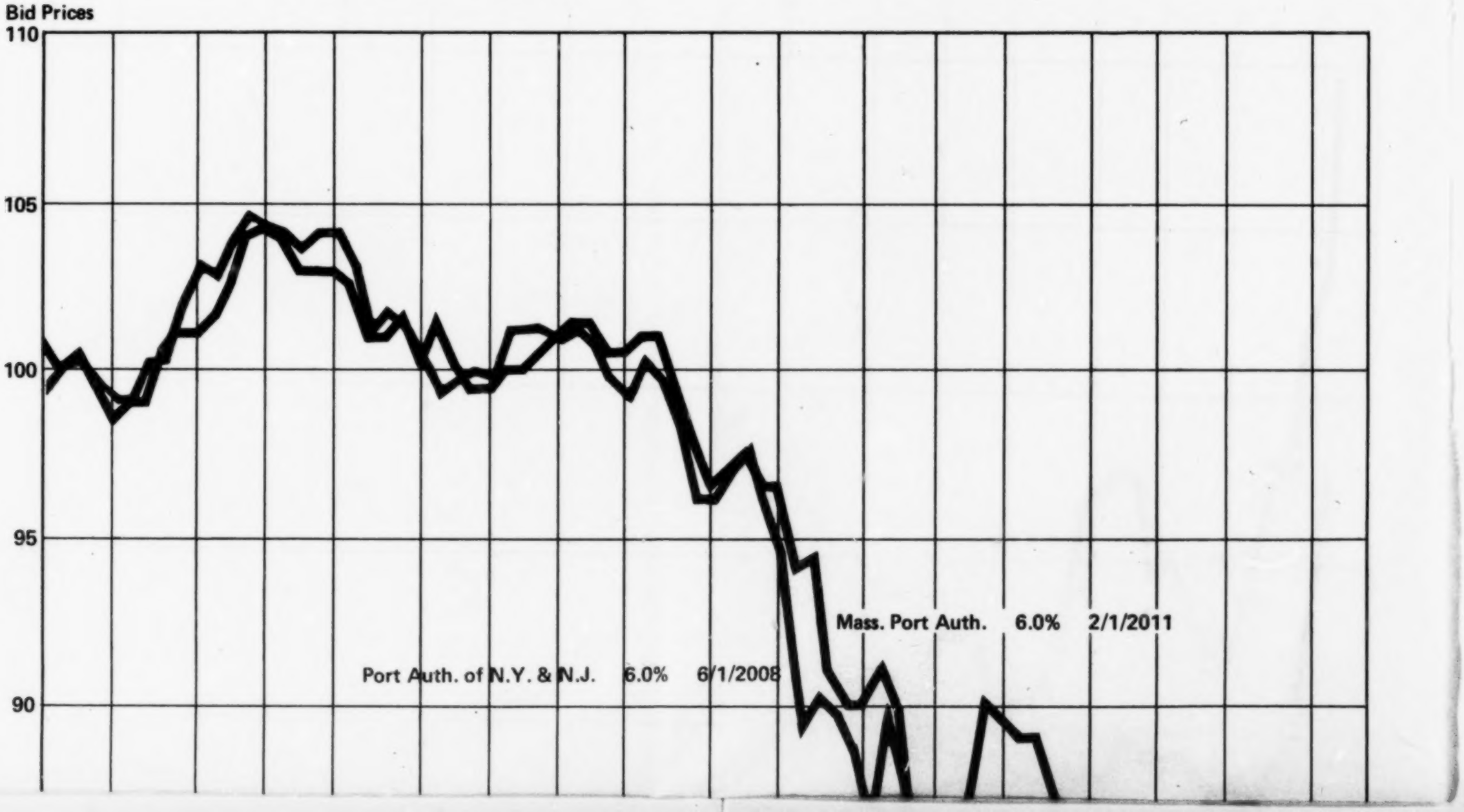
		Port Authorty of New York & New Jersey 6.0% 2/1/2006	Massachusetts Port Authority 6.0% 7/1/2011
	3/29	96½	98
	4/5	96	96½
	4/12	96½	97
	4/19	97	97½
	4/26	95½	96½
	5/3	94½	96½
	5/10	89	94
	5/17	90	94½
	5/24	89	91
	5/31	88	90
	6/7	90½	90
	6/14	90	91
	6/21	87½	90
	6/28	83½	86
	7/5	82½	86
	7/12	82	85
	7/19	82½	87
	7/26	86½	90
	8/2	83	89½
	8/9	84	89
	8/16	83½	89
	8/23	83	87½
	8/30	78	86
	9/6	77	86½
	9/13	77	86½
	9/20	78½	85
	9/27	80	86
	10/4	79½	86
	10/11	80½	86
	10/18	81½	86
	10/25	82½	87
	11/1	81½	86½
	11/8	78	87
	11/15	77	87
	11/22	75½	86
	11/29	73	85
	12/6	70	80
	12/13	65	77

Exhibit P-91

Exhibit P-91

COMPARISON OF DOLLAR PRICES

PORT AUTH. OF N.Y. & N.J.	6.0%	6/1/2008
MASS. PORT AUTH.	6.0%	7/1/2011



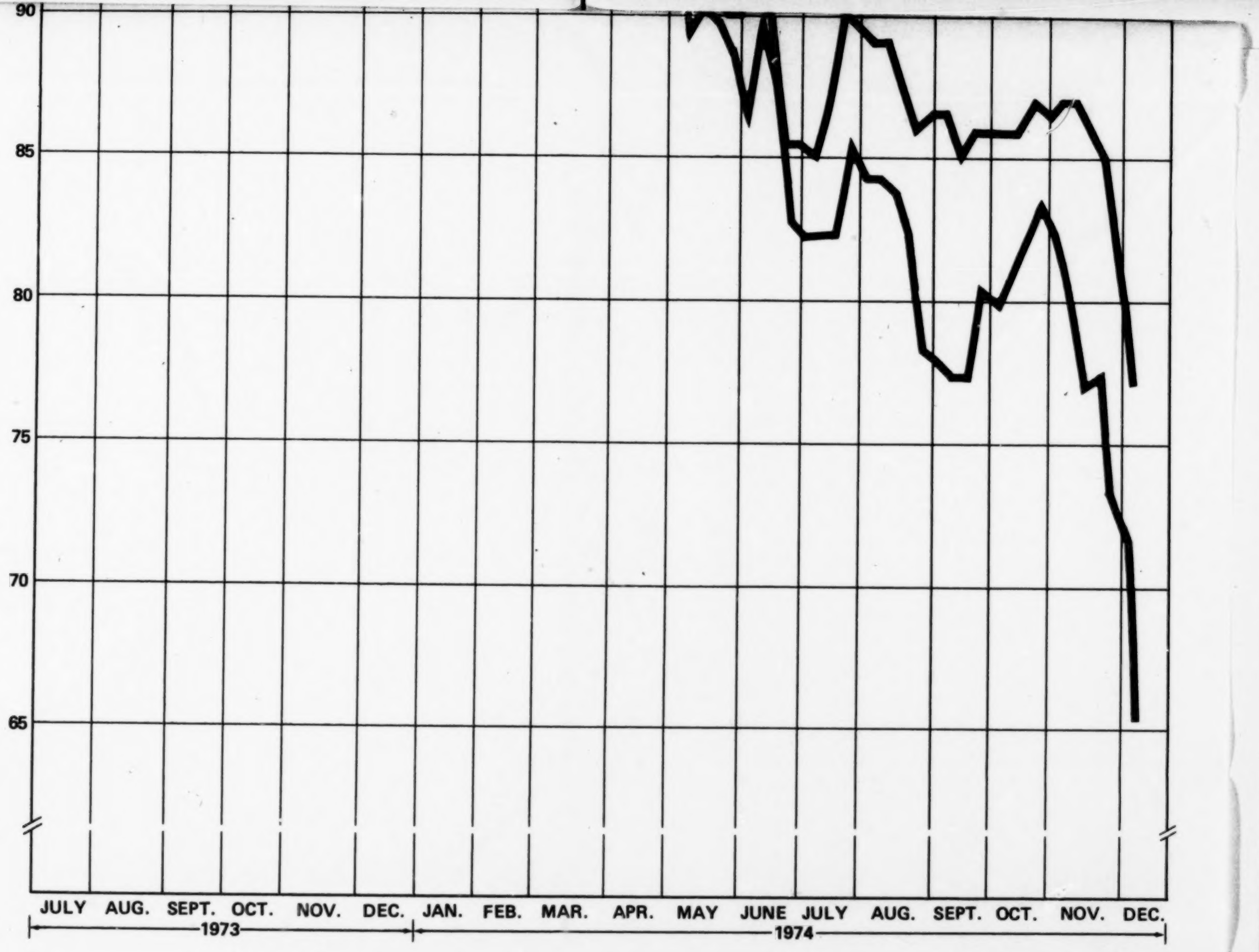

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Exhibit P-92

		Port Authority of New York & New Jersey 6.0% 6/1/2008	Massachusetts Port Authority 6.0% 7/1/2011
1973	7/6	99⅜	101
	7/13	100	100
	7/20	100⅛	100½
	7/27	99½	99½
	8/3	99	98½
	8/10	99	99
	8/17	100	99
	8/24	100⅛	100½
	8/31	101¾	101
	9/7	103	101
	9/14	102¾	101½
	9/21	103¾	102½
	9/28	104½	104
	10/5	104¼	104¼
	10/12	104	104
	10/19	103½	103
	10/26	104	103
	11/2	104	103
	11/9	103	102½
	11/16	101	101
	11/23	101½	101
	11/30	101	101½
	12/7	100	100
	12/14	99	101½
	12/21	99½	100
	12/28	99¾	99½
1974	1/4	99½	99½
	1/11	101	100
	1/18	101	100
	1/25	101	100½
	2/1	100¾	101
	2/8	101	101¼
	2/15	100½	101¼
	2/22	99½	100½
	3/1	99	100½
	3/8	100	101
	3/15	99½	101
	3/22	98¼	99½

Exhibit P-92

	Port Authority of New York & New Jersey 6.0% 6/1/2008	Massachusetts Port Authority 6.0% 7/1/2011
3/29	96	98
4/5	96	96½
4/12	96¾	97
4/19	97½	97½
4/26	95½	96½
5/3	94	96½
5/10	89	94
5/17	90	94½
5/24	89½	91
5/31	88½	90
6/7	86	90
6/14	89½	91
6/21	87½	90
6/28	82½	86
7/5	82	86
7/12	82	85
7/19	82	87
7/26	85	90
8/2	84	89½
8/9	84	89
8/16	83½	89
8/23	82	87½
8/30	78	86
9/6	77½	86½
9/13	77	86½
9/20	77	85
9/27	80	86
10/4	79½	86
10/11	80½	86
10/18	82	86
10/25	83	87
11/1	82	86½
11/8	80	87
11/15	76½	87
11/22	77	86
11/29	73	85
12/6	71	80
12/13	65	77

Exhibit P-93

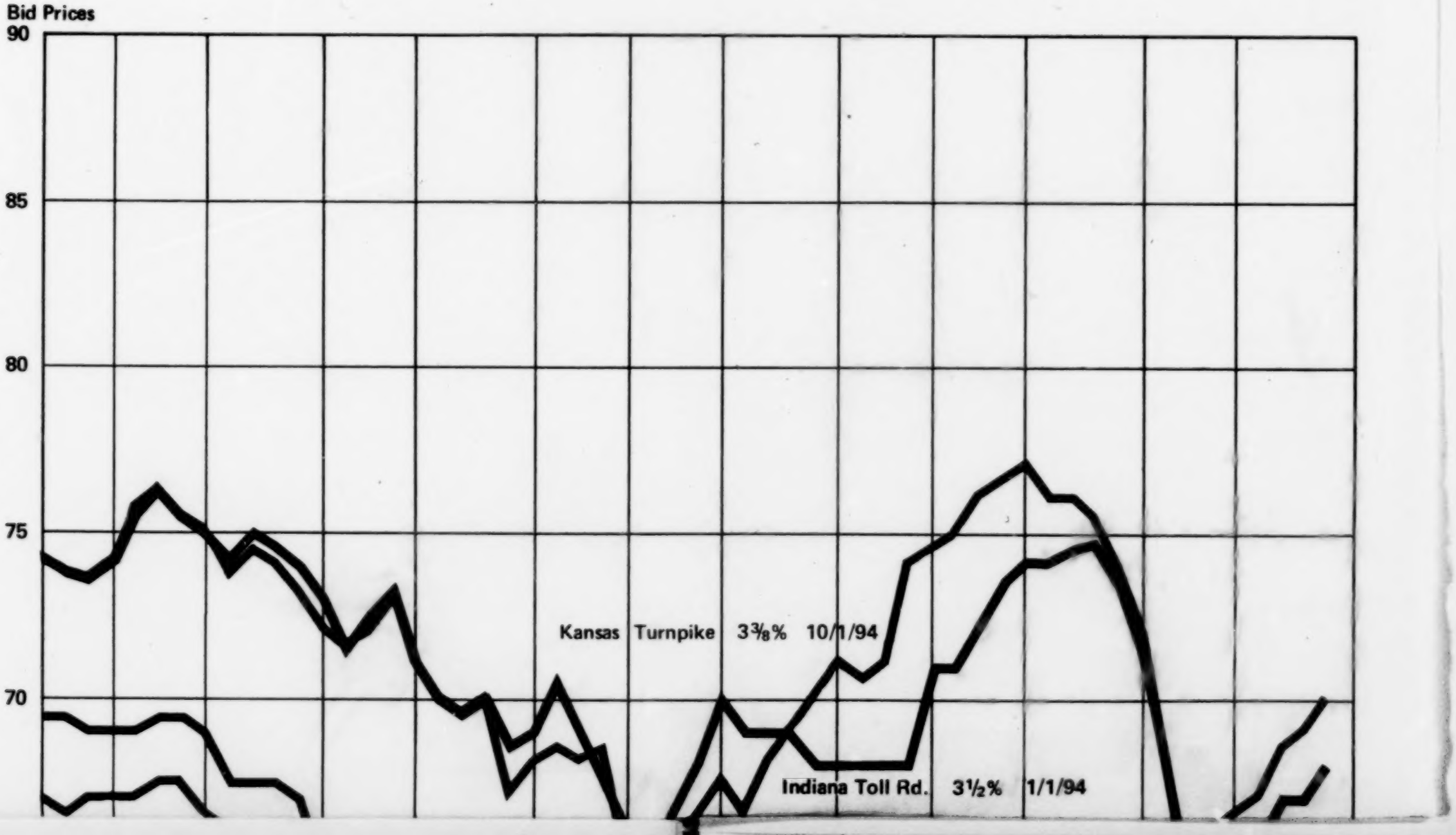
The figures used for these charts are bid prices quoted weekly from the following sources:

Clifford Drake		
Port Authority of N.Y. & N.J.	6.0%	6/1/2008
Mass. Port Authority	6.0%	7/1/2011
Weeden & Co., Inc.		
Port Authority of N.Y. & N.J.	6.0%	2/1/2006
Municipal Dollar Bond Average		
Supplied by Merrill Lynch from figures quoted in "The Daily Bond Buyer"		
Barr Bros.		
Kansas Turnpike	3⅜%	10/1/94
Indiana Toll Road	3½%	1/1/94
Port Authority of N.Y. & N.J.	3½%	5/1/95
Port Authority of N.Y. & N.J.	3⅜%	5/1/94

Exhibit P-94

Exhibit P-94

COMPARISON OF DOLLAR PRICES



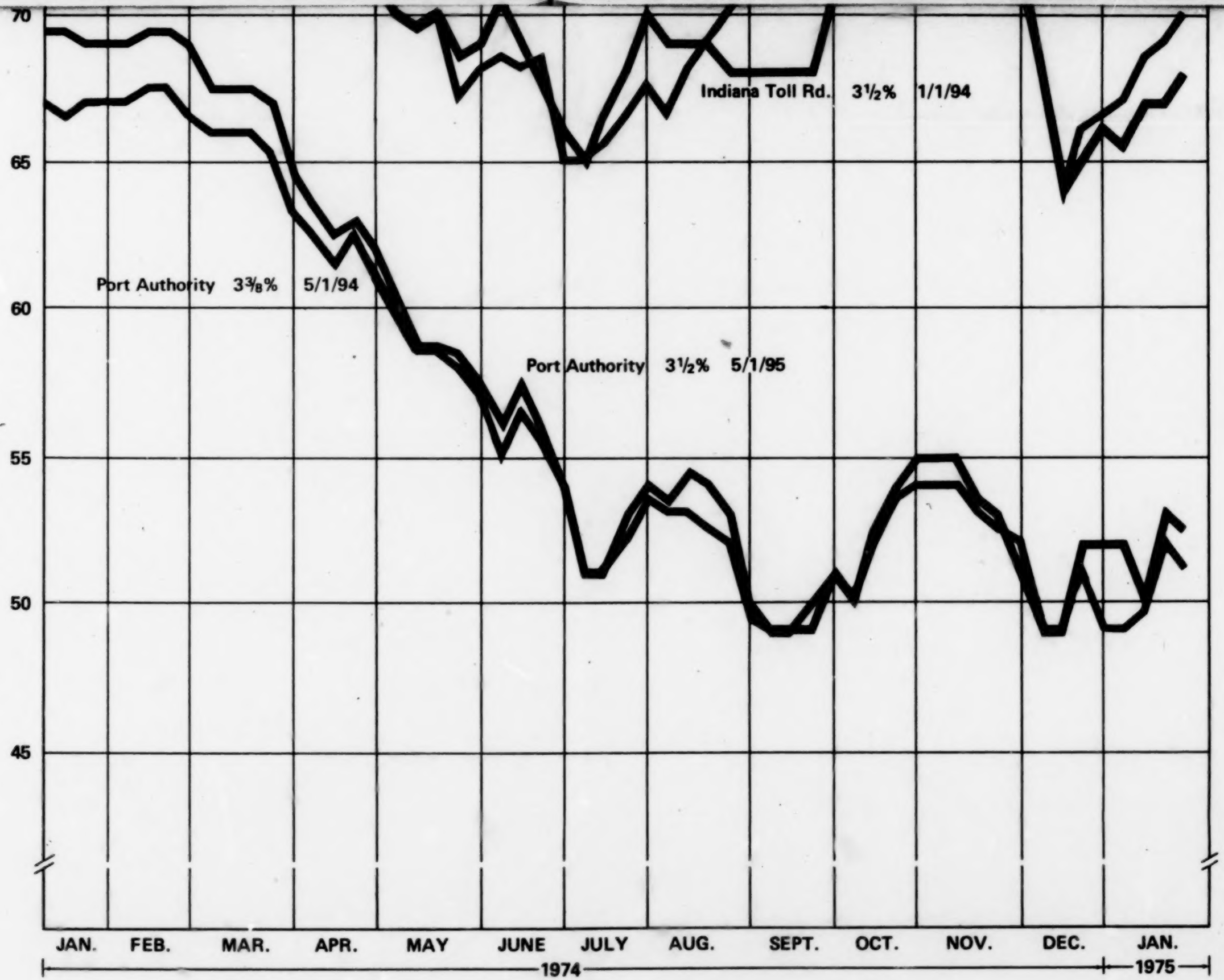

70
65
60
55
50
45
Indiana Toll Rd. 3½% 1/1/94
Port Authority 3⅜% 5/1/94
Port Authority 3½% 5/1/95
JAN.
FEB.
MAR.
APR.
MAY
JUNE
JULY
AUG.
SEPT.
OCT.
NOV.
DEC.
JAN.
1974
1975

Exhibit P-95

		Kansas Turnpike 3⅜% 10/1/94	Indiana Toll Road 3½% 1/1/94	Port Authority of N.Y. and N.J. 3½% 5/1/95	Port Authority of N.Y. and N.J. 3⅜% 5/1/94
1974	1/4	74	74¼	69½	67
	1/11	73¾	73¾	69½	66½
	1/18	73½	73½	69	67
	1/25	74	74	69	67
	2/1	75¾	75½	69	67
	2/8	76¼	76¼	69½	67½
	2/15	75½	75½	69½	67½
	2/22	75	75	69	66½
	3/1	73¾	74¼	67½	66
	3/8	74½	75	67½	66
	3/15	74	74½	67½	66
	3/22	73¼	74	67	65¼
	3/29	72	73	64½	63¼
	4/5	71½	71½	63½	62½
	4/11	72	72½	62½	61½
	4/19	73	73¼	63	62½
	4/26	71	71	62	61
	5/3	70	70	60½	59½
	5/10	69½	69½	58¾	58½
	5/17	70	70	58¾	58½
	5/24	67	68½	58½	58
	5/31	68	69	57½	57
	6/7	68½	70½	56	55
	6/14	68	69	57½	56½
	6/21	68½	67½	56	55½
	6/28	65	66	54	54
	7/5	65	65	51	51
	7/12	65½	66½	51	51
	7/19	66½	68	53	52
	7/26	67½	70	54	53½
	8/2	66½	69	53½	53
	8/9	68	69	54½	53
	8/16	69	69	54	52½
	8/23	70	68	53	52

Exhibit P-95

		Kansas Turnpike 3⅜% 10/1/94	Indiana Toll Road 3½% 1/1/94	Port Authority of N.Y. and N.J. 3½% 5/1/95	Port Authority of N.Y. and N.J. 3⅜% 5/1/94
	8/30	71	68	50	49½
	9/6	70½	68	49	49
	9/13	71	68	49	49
	9/20	74	68	50	49
	9/27	74½	71	51	51
	10/4	75	71	50	50
	10/11	76	72	52½	52
	10/18	76½	73½	54	53½
	10/25	77	74	55	54
	11/1	76	74	55	54
	11/8	76	74½	55	54
	11/15	75½	74¾	53½	53
	11/22	74	73½	53	52½
	11/29	72	71½	51	52
	12/6	68	68	49	49
	12/13	64	64	49	49
	12/20	66	65	52	51
	12/27	66½	66	52	49
1975	1/3	67	65½	52	49
	1/10	68½	67	50	49½
	1/17	69	67	53	52
	1/24	70	68	52½	51

Excerpt from Exhibit P-202

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HUDSON TUBES FINANCING, CERTIFICATION REQUIRED BY AGREEMENT WITH BONDHOLDERS

The Deputy Executive Director reported that funds would shortly be required for Hudson Tubes purposes and recommended the application of unexpended proceeds of Consolidated Bonds, Nineteenth Series, for such purposes.

He pointed out that the Hudson Tubes will be an additional facility and that, therefore, prior to initial application, the Authority is required by covenants with its bondholders to make a certification relating to the financial effect of such financing upon the Authority. The reason for such certification requirement is that the application would, for the first time, add the Hudson Tubes to the group of facilities to which covenants with Consolidated Bondholders would apply, which covenants are secured primarily by the General Reserve Fund at this time. The Director of Finance reviewed the financial projections and data involved with respect to the Hudson Tubes and concluded that certification is in order in view of the fact that the anticipated operating deficits and debt service in connection with the Hudson Tubes represent a percentage of anticipated Port Authority net revenues available for reserves which is safely within the limits necessary to avoid impairment of Port Authority credit, or the investment status of Consolidated Bonds, or the Authority's ability to fulfill its commitments; and in view of the protections afforded in the recently enacted World Trade Center-Hudson Tubes statutes against dilution or pledged revenues and reserves by any commuter rail deficits beyond those of the basic Hudson Tubes System.

Excerpt from Exhibit P-202

Whereupon, the following resolution was moved for adoption by Commissioner Cullman, the motion being seconded by Commissioner Clancy:

> RESOLVED, that certification is hereby made that in the opinion of The Port of New York Authority application of all or any portion of unexpended proceeds of Consolidated Bonds, Nineteenth Series, Due 1991, First Installment or of Consolidated Notes, Series M, for purposes in connection with the Hudson Tubes, will not, during the period 1962 through 1991, in light of the estimated expenditures in connection with said Hudson Tubes, impair the sound credit standing of The Port of New York Authority, or the investment status of Consolidated Bonds, or the ability of The Port of New York Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds.

With the following result:

AYES: Colt, Lowe, Cullman, Clancy, Jackson, McAlevy, Martino, Stillman, Pope.

NOES: None

Carried

Whereupon, at 5:50 P.M. the meeting was adjourned.

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Exhibit P-203

[LETTERHEAD OF]
THE PORT OF NEW YORK AUTHORITY

March 27, 1961

Hon. S. Sloan Colt, Chairman
Hon. James C. Kellogg, III, Vice Chairman
Hon. Howard S. Cullman, Honorary Chairman
Hon. Donald V. Lowe
Hon. N. Baxter Jackson
Hon. John J. Clancy
Hon. Joseph A. Martino
Hon. Robert F. McAlevy, Jr.
Hon. Bayard F. Pope
Hon. W. Paul Stillman
Hon. Alexander Halpern
Hon. Charles W. Engelhard

My dear Commissioner:

Mr. Stephen Wiley, Governor Meyner's Counsel, asked us to prepare an informal memorandum discussing the merits or demerits of using the 1.3 times earnings test provided for in the basic resolution governing the issuance of Port Authority Consolidated Bonds, as an alternate formula by way of a statutory assurance to bondholders, in connection with the proposed issuance of bonds for the acquisition and rehabilitation of commuter rail projects.

Accordingly we prepared and forwarded the attached memorandum to Mr. Wiley.

I think you will find it of interest, not only in setting forth the reasons why such an earnings test is unworkable, but also in summarizing the "10% of General Reserves" formula that is included in the present New Jersey Assembly Bill No. 519.

Exhibit P-203

You will be interested also in its discussion of the effect of subdivision (v) of Section 12 of Assembly 519 which in effect "unties" the statutory formula and leaves bondholders in the same exposed position that they face under the terms of the bill which has just passed the New York State Legislature (see the last paragraph on page 5).

Sincerely,

AUSTIN J. TOBIN
Executive Director

Exhibit P-203

ASSEMBLY, NO. 519

FORMULAE TO PERMIT PORT AUTHORITY COMMUTER RAILROAD ACTIVITIES

In recent legislative consideration of proposals to authorize Port Authority acquisition, operation and improvement of the Hudson & Manhattan railroad system, attention has been given to mechanisms which would preserve the Port Authority's credit and its usefulness to the States in spite of the inevitable deficit character of the Hudson & Manhattan operation and any other commuter railroad operation in the metropolitan area.

It has been recognized that the Port Authority, which cannot tax and which produces its facilities only with money freely loaned by investors, cannot undertake all of the commuter deficit railroad operations in the area, and that without assurance that it will not be called upon to do so, investors will not lend the vast sums necessary for continued port development activities which the two States may seek to achieve through the Port Authority, including commuter railroad facilities themselves.

A search has therefore turned to some formula of limitation not of the Port Authority's participation in commuter railroad activities but of limitation upon the application of revenues and reserves which have already been pledged to the holders of over six hundred million dollars of outstanding bonds.

The search has been for a formula which would protect the Port Authority's credit and yet leave it able, from time to time, to undertake such railroad commuter activities as are within its economic capability.

A mere statement of this objective shows that the answer does not lie in the 1.3 times earnings test for Port Authority Consolidated Bonds. First let us explain that test.

Exhibit P-203

Port Authority Consolidated Bonds are *open* issue bonds. That is to say there is no dollar limit upon the quantity of new bonds which the Port Authority may put out from time to time, bonds which then share all of the liens and pledges of outstanding Consolidated Bonds. These pledges include all of the Port Authority's present resources—both revenues and reserves—subject only to prior pledges in favor of older bond issues which can no longer be used for new financing.

Since a person investing in Consolidated Bonds faces such an "open end", he must have some assurance that the pledged revenues and reserves will not be diluted without limit. The bond contract therefore provides a measure for this purpose. While several alternates exist, only one has been available in practical effect. This measure is a comparison between the earnings of all Port Authority facilities and the maximum future annual debt service on all Port Authority bonds. The earnings are almost all established revenues with some small increments by way of estimate of the earnings of new facilities under construction. If the revenues equal or exceed 1.3 times the debt service figure, including debt service on the proposed new bonds, then the new bonds may be issued; otherwise they may not.

It is therefore obvious that the 1.3 earnings test sets a point of absolute stagnation for the Port Authority—the point of its uselessness to the two States. When the Port Authority can only just meet the earnings test without the debt service on any new bonds, then the Authority could not issue bonds or undertake any new projects, under its contract with the holders of its outstanding bonds.

The 1.3 Consolidated Bonds earnings test, therefore, is not a test which assures a healthy credit and an ability to handle commuter railroad deficits from existing reserves.

Exhibit P-203

For the States, a 1.3 coverage of Authority bonds would be the freezing point for their Authority's credit. Even as that point would be approached, its credit would slide rapidly toward stagnation level. While bonds may theoretically be sold without *legal* limitation, down to but not in violation of the 1.3 test, the interest rate which would have to be paid on any bonds which could be sold during such a slide toward a 1.3 coverage would increase sharply. The resulting increased debt service would, of course, push most of the proposed new facilities over the line of economic practicability. Since practically all prospective new Port Authority undertakings would, at best, be marginal, the increased debt service of any possible financing at or close to the 1.3 level would make these facilities economically impossible, even though a theoretical legal ability to issue the bonds remained.

The Port Authority's relatively favorable interest rates have been used in calculating the containable deficits of the Hudson & Manhattan Railroad, the development of Port Elizabeth, and any other new facilities or capital improvements. This program can be carried on only if the Authority can maintain the margins over the 1.3 breaking point which bondholders require to lend their money at interest rates at which future projects will continue to be economically practicable.

The whole objective of any statutory formula is to preserve the Port Authority's economic resources as against the size of commuter rail deficits in northern New Jersey and New York, i.e.—about $30,000,000 at the present time. If this can be accomplished, the States can continue to enjoy the usefulness of the Port Authority in providing needed public improvements,—including commuter railroad facilities. Prospective investors, who are free to take or leave any Port Authority bonds offered, must assume,

Exhibit P-203

in their evaluation, that any resources which the Port Authority will be permitted by the new statute to apply to commuter railroad deficits will, in fact, be so applied. The enactment of a 1.3 test would be taken by prospective investors as reflecting a legislative purpose to drive the Port Authority's net earnings down to the 1.3 level. Nothing could more surely impair the Port Authority credit which must be preserved to carry out any railroad commuter program itself, let alone the remainder of the bi-State port program.

As a matter of fact, the revenues of existing facilities have all been pledged and are not available as such for railroad commuter facility deficits. There is no legal way in which they can be applied to either the operating expenses of such railway facilities or the debt service on any bonds issued in connection therewith. It is only as revenues of existing facilities exceed the requirements for their operation and maintenance and debt service that the revenues find their way into the General Reserve Fund. It is in this form, as reserves, that the General Reserve Fund statutes and the contracts with bondholders provide a means of absorbing commuter railroad facility deficits. So long as certain contractual requirements are complied with, the General Reserve Fund *can* be applied to such railroad deficits whereas earnings of existing facilities, as such, cannot.

For this reason, any search for a rail commuter formula has been in terms of a percentage of reserves which could be applied to meet the anticipated deficits.

The present Assembly bill, A 519 (page 8) contains a formula which meets the needs of the situation in subdivision (iv) of subsection (c) of amended Section 12. (The amendment is contained in Section 6 of the Assembly bill).

Exhibit P-203

The formula lays down a condition to the application of pledged revenues and reserves to the deficits of a commuter railroad which would be proposed to be undertaken by the Port Authority. It would require the Port Authority to estimate the deficits after debt service of the group of Port Authority commuter railroads which would consist of the H&M and any other such railroads which had previously been undertaken in compliance with the formula as well as the proposed new facility. Having thus measured the likely annual commuter railroad deficit which the General Reserve Fund would be called upon to meet annually, the bill provides that the new facility can be undertaken if this deficit is not greater than 10% of the amount in the General Reserve Fund, measured, of course, on the basis of the remaining facilities of the Port Authority.

Certainly Port Authority credit could not survive bondholder apprehension that *all* of the General Reserve Fund would be siphoned off into commuter railroad deficits. The 10% figure has reality in relation to the present debt burden of the Port Authority and the prospective deficits which the Port Authority could absorb from commuter railroad operation.

Projections of the size of the General Reserve Fund based over the next decade indicate that this formula, without impairing the Port Authority's credit, would permit the application of the General Reserve Fund to commuter railroad deficits to an amount on the order of $10,000,000 per year.

It was suggested that at some time beyond the foreseeable future the General Reserve Fund might decline in amount because foreseeable Port Authority debt might be paid off without replacement by new debt incurred in the construction of new facilities. The pattern of past history suggests

that this is not likely since the expanding needs of the Port District in both States have always required new and greater financial effort by the two States through the Port Authority to keep abreast of the problems of the area. However, in case the General Reserve Fund should, nevertheless, decline without any comparable contraction in Port Authority earnings, the bill contains a safeguard which would keep the limit of permissible commuter railroad deficits in line with the Port Authority's ability to sustain them. This is done by substituting an alternate figure for the figure of the General Reserve Fund test if the former should prove higher. This alternate figure is measured by the Port Authority's equity in its vehicular bridges and tunnels and other non-railroad facilities it owns and operates augmented by the monies in the General Reserve Fund. The alternate equity figure is 1% of the amount of Port Authority debt for these facilities retired from income or reserves plus 1% of the amount in the General Reserve Fund measured by the non-railroad facilities.

The equity figure, of course, increases each year as debt is paid off so that even if the General Reserve Fund might, contrary to expectations, decline for some reason, the size of the equity will be moving in the opposite direction thus stabilizing or increasing the figure which would measure the containable commuter railroad deficit under the formula.

It must be recalled that the proposal that a self-supporting Authority should undertake perpetual deficit operations is a sharp wrench from the entire philosophy of Authority financing. The entire Port Authority debt structure, including the 1.3 test in the Consolidated Bond resolution, is based upon the theory that new debt produces new facilities and new flow of earnings into the General Reserve Fund.

Commuter railroad facilities cannot fit this pattern. They will, of course, produce new debt but they will cause a drain on the General Reserve Fund for the payment of their operating deficits and their debt service expenditures. That is why they cannot be undertaken if to do so would materially impair the investment status of the existing bonds and the Port Authority's sound credit standing.

To adapt the traditional Authority concept of self-supporting facilities to this new approach requires the most delicate wooing of private investment capital. Any blunt attempt to ignore the psychology of investors will defeat not only the existing Port program and any future Port program, but even the hope of commuter railroad operation by the Port Authority.

That is why the addition of subdivision (v) of subsection (c) of Section 12 A. 519 is such a grievous mistake. That subdivision provides that regardless of the "formula", future Commissioners of the Port Authority could go forward with any other and additional deficit commuter rail facility or facilities that they may think would not impair the Authority's credit. This, in effect, unties the "formula" and leaves the prospective investor just as badly off as he would be without any formula at all. He and his fellow investors are asked to put up some $300,000,000 of capital in reliance on a 30 year "open end" revenue bond on the speculation that five, ten, or fifteen years from now the then Commissioners of the Port Authority will resist public and political pressure to go even deeper into commuter rail deficits. As the Vice-Chairman of the Port Authority said before the Senate Commission on January 27, 1961, speaking for all the Commissioners of the Port Authority:

> "I say to you as a New Jersey Commissioner, and with all the sincerity that I can command, that there

> is nothing arbitrary or doctrinaire about this conclusion. It simply represents the realities of investment financing and the Port Authority's credit. My business is investment financing and I say to you Gentlemen that I could not sell a single Port Authority bond without such an assurance. If my responsibilities were on the other side of the table, I would not buy a Port Authority bond that did not contain such an assurance."

The Port Authority is trying to keep open the channels of investment capital which will permit the public, without taxation, to have the facilities which the two States determine are necessary for their people's needs. In order to realize the legislative program, the legislators must try to put themselves in the place of potential investors. The legislators must evaluate what will attract and what will drive away the capital needed to realize their program. They must recognize that the bonds which must be sold for the Port Authority's program are competing with tax supported bonds which the states and municipalities in this area and other areas are themselves putting out for other needed public programs. The purchaser of the tax supported bond has none of the problems which have been explored in this memorandum in the case of an agency proposing to undertake perpetual deficit operations. The revenue bond investor cannot call on the taxing power of the state. If the hopes and plans of the authority whose bonds he buys are not realized, he will lose not only his interest but his capital. Normally, when an investor stands to lose capital because of unrealized economic projections, he also stands to make a capital gain if the projections are in fact realized. The revenue bond stands in a no man's land where the capital is risked without any offsetting

opportunity for capital gain and without the certainty which tax support gives.

Under these circumstances, neither the states nor the Port Authority can commandeer the capital to do the Port Authority's job. The only formulas that will work are those which allay the apprehensions of investors. Subdivision (iv) contains a test which should serve that purpose and permit a great contribution by the Port Authority in the commuter railroad field. The 1.3 test and the continued inclusion of subdivision (v) would have the opposite effect.

Exhibit S-1

THE WALL STREET JOURNAL

THURSDAY, AUGUST 15, 1974

WORLD TRADE CENTER IS FAR BEHIND PLANS FOR FILLING OFFICES

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Construction Delays and Glut Of Rental Space Blamed; Will It Be Full by 1976?

By RICH JAROSLOVSKY
Staff Reporter of The Wall Street Journal

NEW YORK—When plans for the controversial World Trade Center, this city's largest office complex, were unveiled in the 1960s, spokesmen confidently predicted that the buildings would be fully occupied by the summer of 1974. But that date has come and is about to pass—and spokesmen now say it will be at least 1976 before all space has been rented.

Of the nine million square feet in the complex, about four million earmarked for various governmental offices have already been leased. But of the remaining five million, earmarked for commercial firms engaged in international commerce and for foreign governments, only about three million have been leased. In other words, about 22% of the entire complex—40% of the commercial space—is still unleased.

The center, with its twin 110-story towers rising from the east bank of the Hudson River, has been stung by the current office-space surplus, says Guy F. Tozzoli, director of the World Trade department of the Port Authority of

Exhibit S-1

New York and New Jersey, which owns the building. While not as hard hit as many other lower Manhattan office buildings—several of which, never occupied, have stood vacant for years—the center is still currently about a year and a half behind its rental schedule.

Almost Filled—Once

Mr. Tozzoli blames several factors besides the space glut for the delay. For one, he notes that labor problems held up construction work, and for another, "Well, no one can have a project this size and meet all the targets." Nonetheless, he says of the office space surplus, "I don't think you could say it hasn't affected us."

As far back as 1968, two years before the first tenants moved into the complex, almost half its space was already rented. And, says Mr. Tozzoli, "at one time, I had signed memoranda of intent that filled the Trade Center, or very close to it." But since then, he says, the troubled economy has forced some firms that intended to move into the building out of business, while others found more attractive rates elsewhere.

Ironically, the World Trade Center is behind schedule despite what private brokers and developers consider a marked advantage. Because the Port Authority is a governmental agency, it pays the city only a small fraction of what it would owe in taxes if it were privately owned. Thus, brokers say, it can afford to charge lower rates to its tenants, drawing them away from private buildings. One prominent broker-developer says, "It's damned unfair competition."

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Exhibit S-2

THE NEW YORK TIMES
NOVEMBER 10, 1974

Port Authority Has Fallen On Hard Times

By Frank J. Prial

The giant Port Authority of New York and New Jersey, long one of the wealthiest, most powerful and most active public agencies in the world, has entered a period of difficulty unparalleled in its more than 50 years experience.

Even some of its highest officials, commissioners who shape its policies, agree that the Port Authority is at something of a low point in its long career. "The Port Authority," said one New Jersey Commissioner, "is dead in the water."

Interviews conducted by The New York Times over the last several weeks with Port Authority commissioners, officials, and past employees, as well as officials of New York and New Jersey and specialists in public authorities, indicate that the deterioration of the huge agency may be more serious than anyone had previously imagined.

The principal problem facing the agency, authority officials say, is its inability to sell bonds or borrow money at favorable terms. A bond holders' suit has scared off potential lenders and underwriters. It may be months or longer before the issue is resolved.

But beyond that, some of the impressive facilities of the Port Authority, an agency with a reputation for building moneymakers, have stopped making money or—in some cases—never started.

It is assumed, for instance, that the vast World Trade Center is not yet a moneymaker. But real-estate informants estimate that the project may be losing $10-million to $25-

million a year. In addition, it has incurred enormous cost overruns—perhaps $100 million so far. "I guess you could say it's a white elephant," said one Port Authority official.

Even more surprising is the fact that the Holland Tunnel, the facility that poured money into the Port Authority's coffers for many years, now apparently is barely breaking even.

The Port Authority Bus Terminal, at 41st Street and Eighth Avenue in Manhattan, also is experiencing difficulties. The terminal is crowded with buses, but many of the bus companies are out of money and are resisting having to pay for a long-planned expansion of the terminal northward to 42d Street.

The Port Authority reportedly is considering doing away with commuter discounts on its bridges and tunnels, and channeling the extra income into the bus terminal expansion.

The crisis is also one of leadership. William J. Ronan, chairman of the Port Authority, apparently is not the leader some of his fellow commissioners had expected him to be.

"For all practical purposes," said one senior member of the authority, "Ronan is finished as head of the Port Authority."

Port Authority officials stressed that Dr. Ronan's shaky position was not related to the disclosure that he had received a gift of $550,000 from former Gov. Nelson A. Rockefeller.

Other Port Authority facilities in or near financial trouble include:

¶Newark Airport. Now known as Newark International Airport, this new operation with its huge satellite terminals is a loser, although it was a money-maker as recently as a

few years ago. Plans to finish a third satellite terminal have been postponed and traffic in the existing terminal is minimal. "It's like a ghost town out there," said one Port Authority man, glumly.

¶PATH—Port Authority Trans-Hudson. The agency's 14-mile commuter railroad is expected to run up a $30-million deficit this year. Plans to extend the line from Penn Station in Newark to Newark Airport and on to Plainfield in Union County are in abeyance. Privately, some Port Authority officials predict the extension will never be built.

¶PATH Transportation Center. The Port Authority's Jersey City office building, train station and bus terminal is losing money, too. "We never needed it," one commissioner said. "It has enormous losses but we haven't figured out how to handle the bookkeeping yet." The project, according to one former Port Authority executive, originally was undertaken to placate John V. Kenny, the former Hudson County Democratic leader, who wanted a Port Authority project in his area.

¶The West Side Passenger Ship Terminal financed by the City of New York but constructed by and scheduled to be operated by the Port Authority. The ship terminal is about to open at a time when passenger-ship travel has all but disappeared from New York harbor. User charges from the steamship lines are supposed to cover rental payments and operating and maintainance costs. The terminal is scheduled to be formally dedicated later this month.

¶The Newark Truck Terminal. This large terminal near Newark Airport has been a financial loss to the agency for several decades.

¶The George Washington Bridge Bus Terminal. Built 11 years ago, this station has never been a success and is still under-utilized.

¶The Bayonne Bridge and the Outerbridge Crossing. Along with the Goethals Bridge, these lines between Staten Island and New Jersey also have been money-losers for decades. Authority officers said, however, that the Goethals Bridge, which connects Brooklyn, Queens and Long Island with the New Jersey Turnpike via the Verrazano Narrows Bridge and the Staten Island Expressway, makes money.

¶The World Trade Center. "It is a vast white elephant," one commissioner said. "It's supposed to cost $600-million when they made the deal. Then there were a long series of strikes. They decided to add a commodity exchange. Then they took over the broadcasting antennas from the Empire State Building. What's more, there has been tremendous inflation. The cost is over $900-million now and the end is nowhere in sight."

Added to the World Trade Center's problems is the fact that the largest tenant, the State of New York, is witholding rent payments of $115,000 a month, with the total bill now around $4-million. The state contends it is being overcharged and the matter is now being negotiated.

Audit Under Way

Just how much each of these facilities is losing, or making, is being determined in an audit by the New York State Controller, Arthur J. Levitt. The Port Authority does not itemize figures for each of its installations in its annual financial report.

An audit done by Mr. Levitt in 1969 showed that the George Washington Bridge, the Lincoln Tunnel and the three airports—Kennedy, Newark and La Guardia—taken together, were more than profitable enough to carry all the other Port Authority operations and still contribute to enormous profits.

Exhibit S-2

According to Port Authority officials, the Lincoln Tunnel and the George Washington Bridge still are profitable, as are Kennedy and La Guardia airports. "There is no doubt, though," said one Port Authority man, that "the fuel crisis has hurt us on the ground and in the air."

Of Dr. Ronan, one commissioner said:

"Rockefeller shoved Ronan down our throats. Now he's running Rockefeller's campaign for Vice President, he is still involved with Rockefeller's Committee for Critical Choices, and he's picking up consulting jobs.

"Meanwhile, he won't let the Port Authority staff make any decisions. As a result, nothing is getting done. Bill Ronan is a brilliant man, but he's an idea man, not an administrator. You can't run this agency part-time."

There is a movement among the commissioners to confine the chairman to presiding at meetings and letting the executive director run the authority.

"If Kuhbach can't do it, we'll get someone else," another commissioner said, "but at least we should give him a chance." A. Gerdes Kuhbach has been executive director of the Port Authority since last year.

How did the Port Authority get into its present condition? "Well, for one thing, the management got bad," said a commissioner with several years of experience on the authority.

"Austin Tobin was the Port Authority," he said. "He put it together. He conceived the projects and he made the bonds acceptable—and he caused the whole thing to become moribound because of his quarreling with former Gov. William T. Cahill of New Jersey."

"Meddling Is Charged"

This commissioner, who like several others would speak only off the record, is convinced that Mr. Tobin's abrupt

Exhibit S-2

resignation as executive director of the Port Authority in 1972 was provoked by what they call Mr. Cahill's "meddling" in the Port Authority's affairs.

Mr. Cahill, a Republican who preceded Brendan T. Byrne, was elected on a promise to involve the Port Authority more deeply in mass transportation. And, in fact, he extracted from the agency various agreements that it would take on mass-transportation projects. Aside from various studies, however, there is little physical evidence of any of those agreements four years after most of them were made.

The crux of Governor Cahill's fight with the Port Authority was an agreement signed in 1962 whereby the Port Authority would revitalize what is now PATH in exchange for a promise from both New York and New Jersey that it would never again be required to take on a deficit passenger rail operation.

Governor Cahill and other critics of the Port Authority, such as Theodore W. Kheel, the labor lawyer, have long argued that the agency sits on vast financial reserves that should be released to help solve the area's transportation problems.

The Port Authority contends that its operation of PATH and the bus terminals and its underwriting of the purchase of almost 1,000 rail commuter cars for New York State do, in fact, constitute an involvement in mass transportation.

The argument is now in the courts. Both states rescinded the 1962 agreement with the Port Authority only to find that it was actually a covenant between the agency and its bond holders—a covenant the Port Authority claims is inviolate until all the bonds issued under it have been retired, sometime in the next century.

After the repeal of the covenant by the states, the bond holders, represented by the United States Trust Company,

sued. The former chairman of the United States Trust Company is Hoyt Ammidon, a former vice chairman of the Port Authority, and one of the prominent attorneys for the bond holders is Robert B. Meyner, who was Governor of New Jersey when the preliminary negotiations on the take-over of PATH and the construction of the World Trade Center were underway.

In an interview recently, Mr. Meyner noted that all the early negotiations had been handled by his Transportation Commissioner, Dwight Palmer, and that he had left office when the deal including the covenants was finally signed.

The Port Authority's present situation stems from the fact that it cannot borrow money at favorable terms until the lawsuit is resolved. And, as former Governor Meyner said, "This suit could go right to the Supreme Court. There are public authorities all over the nation watching this case."

Some commissioners reluctantly agree. "The lawyers have got their meters running," said one. "This could go on for a long, long time."

"In the meantime," he continued, "we can't raise any money. Morgan Guaranty turned us down on a loan, and as for selling bonds, Merrill Lynch said they couldn't sell a trading stamp for us right now."

It Would Sell

Not everyone agrees with this. A specialist in public-authority bonds who declined to be named said he would have no trouble selling a Port Authority issue. "It might cost them more than they would like," he said, "but it would sell."

Dr. Ann Marie Walsh of the Twentieth Century Fund, a long-time student of public authorities, echoed that opin-

ion. "They could float more bonds," she said, " but they've had things their own way for so long, they don't want to pay a higher rate."

Dr. Walsh, who is writing a book on authorities, insists that she is "no fan" of the Port Authority, but she credits it with being highly efficient and very competent. "Right now," she said, "they are being blamed for a lot of things not of their own doing."

She added that the various investigations of the port agency about to begin or being called for were unlikely to turn up any startling revelations. She said she believed that Mr. Kheel's claims that the authority has huge sums of money that could be used elsewhere were "exaggerated a bit."

"Technically," Dr. Walsh said, "they have to maintain reserves to protect their bond holders. There is an advantage for them in building up higher reserves than might be necessary—this keeps their funds tied up. But the truth of how much money they have available is probably somewhere between Mr. Kheel's contentions and those of the Port Authority."

Among the various investigations of the Port Authority now going on is a routine audit by Mr. Levitt's office. Part of that audit first disclosed the fact that the state was not paying rent for the 56 floors it occupies in the World Trade Center, pending an agreement on what the rent should be. Yesterday, Mr. Levitt said he would over the next three weeks issue reports on "the general profitability of the Port Authority, the profitability of each of its facilities, and the efficiency of several aspects of the port's purchasing and concession activities."

The Port Authority, according to one commissioner, netted about $4-million last year and is expected to net about

Exhibit S-2

$20-million in 1974. Mr. Levitt's auditors generally agree with these figures. Privately, however, they believe that the authority's accounting procedures are designed to minimize profits by tying up as much money as is legally possible in reserves covered by covenants with bond holders.

"It's all perfectly legal and supercautious fiscal practice," one state auditor said, "but they could show a much more impressive bottom line if they chose to do so."

The $4-million and $20-million figures, in any event do not represent sufficient income for the authority to build at the rate it had done so in the past.

Governor Byrne's announcement last week that he wanted an outside audit of the Port Authority prompted Mr. Levitt to disclose that his audit was already under way. In the data Mr. Levitt sent to Mr. Byrne he seemed to disagree with the contention that the agency is experiencing financial problems.

"The fact that much of the authority's borrowings are shortterm," Mr. Levit said, "indicates that earnings from its facilities are so great as to allow the authority to undertake substantial construction commitments by means of short-term borrowings, which are repaid out of current revenues."

Actually the Port Authority has curtailed almost all its construction commitments, including the proposed expansion of the 41st Street bus terminal. That plan, now postponed, called for doubling the size of the terminal by extending it north to 42d Street.

Exhibit S-3

NEW YORK—NEW JERSEY PORTS

6%

2008

40th Series

1975:

Date	Bid	Asked
Jan. 3	68½	71½
Sat. 4	68½	71½
Sun. 5	—	—
Mon. 6	—	—
Tues. 7	Not Available	
Weds. 8	70	73
Thurs. 9	70½	73½
Fri. 10	71½	74½
Sat. 11	Not Available	
Sun. 12	—	—
Mon. 13	—	—
Tues. 14	74	78
Weds. 15	74½	78½
Thurs. 16	77	81
Fri. 17	77	81
Sat. 18	77	81
Sun. 19	—	—
Mon. 20	—	—
Tues. 21	77	81
Weds. 22	78	82
Thurs. 23	78½	82½

SOURCE: NEW YORK TIMES

Exhibit S-3

MASSACHUSETTS PORTS
6% 2011

1975:

Date	Bid	Asked
Jan. 3	78	81
Sat. 4	78	81
Sun. 5	—	—
Mon. 6	—	—
Tues. 7	Not Available	
Weds. 8	79	81
Thurs. 9	79½	81½
Fri. 10	79½	81½
Sat. 11	Not Available	
Sun. 12	—	—
Mon. 13	—	—
Tues. 14	80	—
Weds. 15	81	85
Thurs. 16	81	85
Fri. 17	82	86
Sat. 18	82	86
Sun. 19	—	—
Mon. 20	—	—
Tues. 21	83	87
Weds. 22	83	87
Thurs. 23	83½	87½

SOURCE: NEW YORK TIMES

Exhibit S-4

[LETTERS TO THE EDITOR]
THE NEW YORK TIMES,
May 1, 1974

JERSEY AND THE P.A.: THE BROKEN VOW

To the Editor:

This letter is prompted by the sickening spectacle pictured in the May 1 Times of a group of public officials smirking happily over the signing of a New Jersey bill to repeal the 1962 covenant with respect to Port Authority expenditures in the mass-transit field. Public credit depends in a large measure on the good faith of government at all levels. That responsible officials can gleefully dishonor a state's commitment can only be destructive of public credit. The 1962 covenant was embodied in concurrent legislation adopted by the two states and reads: "The two states covenant and agree with each other and with the holders of any affected bonds" . . . that no pledged revenues shall be applied . . . "for any railroad purposes whatsoever other than permitted purposes . . ."

The verb "covenant" means to promise by a covenant. The noun "covenant" means a "formal, solemn, and binding agreement." Accordingly, in 1962 each of the two states *promised by a formal, solemn and binding agreement* that the Port Authority's activities in the railroad field would be limited as indicated.

If the State of New Jersey can cavalierly renege on this promise, how can an investor feel assured that it will always honor the promise to pay printed on the face of its bonds? Were I responsible for rating its credit, no state which dishonored a promise of this sort would retain an Aaa rating on its general credit. And the sad fact is that in terms of

Exhibit S-4

a contribution to mass transit the action taken really will accomplish nothing. There is no great excess flow of current funds which can be made available, and instead of making large borrowing capacity available for mass transit it will impair the borrowing power of the Port Authority for any purpose.

The Port Authority was not created for the purpose of solving mass-transit problems, in spite of recent attempts to rewrite history. The Port Authority has been expected to operate as a public business agency with no source of funds other than revenues from its services. A broad view of urban and energy problems suggests that government should act to discourage auto traffic into major cities in favor of the greater use of mass transit. This would probably involve a sizable shift of funds from charges imposed on automobile traffic to the support of mass transit; to do this is an exercise of the state police power, and it should be done in this instance by the two states themselves, and applied to all automobile traffic entering Manhattan.

The action of the states in repealing the 1962 Port Authority covenant is actually a cop-out from their own responsibilities. Only Governor Wilson seems to realize the significance and importance of honoring his state's commitment.

JOHN F. THOMPSON
New York, May 1, 1974

The writer has spent forty years in the municipal bond field.

Exhibit S-5

[LETTERS TO THE EDITOR]

THE NEW YORK TIMES
MAY 14, 1974

MASS TRANSIT AND P.A. FISCAL PRUDENCE

To the Editor:

John F. Thompson's May 7 letter dealing with the Port Authority requires the following comments on behalf of the Port Authority.

To the extent that Mr. Thompson implicity criticizes the Port Authority commissioners, the record should be clear that:

1. The Port Authority's excellent credit rating has been based principally on the prudent and responsible management and fiscal policies of the commissioners and their career staff, and the resulting ability to maintain debt service coverage and reserves adequate to meet its obligations and programs. Thus, in 1973, our net revenues met bonded debt service requirements 2.12 times.

2. At the same time, the Port Authority, an agency of the States of New York and New Jersey, operates under legislation adopted by the two states to establish policies and programs for the Port Authority.

3. When the State of New Jersey on May 1 approved an act to repeal the 1962 statutory covenant, I stated it would be welcome to have both states, New Jersey and New York, in agreement on this matter. It could serve to expedite both legal and physical progress.

I also stressed that the lifting of the statutory covenant *per se* does not mean that bondholders' security would be eroded. The two states have not determined and the com-

Exhibit S-5

missioners have not acted to impose deficit burdens on the Port Authority in the rail or other fields which could impair revenue coverage or reserve requirements established in our indentures. Additionally, the board of commissioners is committed to preserve the credit of the Port Authority, which is vital to the present and any future undertakings of the agency. Governor Byrne, on signing the New Jersey bill, expressly stated his own determination to avoid impairing the Port Authority's credit.

4. When it was announced that the U. S. Trust Company had sued the State of New Jersey to declare the repealer invalid, I stated on behalf of the Port Authority that we expected and welcomed an expeditious legal test of the validity of the repealer.

None of us has claimed that the Port Authority was created solely for solving mass-transit problems, but the board and the two states are determined to make significant contributions to the improvement of mass transit facilities. I can assure Mr. Thompson and his colleagues in the municipal bond field that the board of commissioners will continue to act with fiscal prudence and responsibility in carrying forward all the projects and programs of the Port Authority.

WILLIAM J. RONAN
Chairman, Port Authority
of New York and New Jersey
New York, May 9, 1974

Exhibit S-15

May 1st, 1974

DRAFT

THE MUNICIPAL BOND CLUB OF NEW YORK

Members of the Municipal Bond Club of New York have expressed to the Club's Board of Directors their great concern regarding recent events affecting the Port Authority of New York and New Jersey. On April 30th, Governor Byrne of New Jersey signed legislation removing a statutory covenant granted to bondholders in 1962, limiting the Authority's activities in mass transportation projects. At the signing ceremony were Authority officials including Dr. William J. Ronan, the new Chairman, Mr. Kellogg, the former Chairman, State Officials, and Mr. Paul O'Dwyer, New York City Council President.

The Municipal Bond Club members have relied on the Authority's representations regarding the 1962 covenant for the past 12 years. The unprecedented removal of the covenant will adversely affect the bondholders investment. The measure is a breach of bondholders' contract. The value of Port Authority Bonds has already declined in the marketplace and selling bondholders have already suffered losses. It is the opinion of the Municipal Bond Club Directors, that the Authority will be unable to publicly finance its projects in the future until litigation introduced by the United States Trust Company, on behalf of the bondholders, is resolved.

This action by the State of New Jersey is a severe blow to the Port Authority's record of financial integrity for over 50 years. The municipal bond industry is shocked by the moral bankruptcy of the government leaders in both New Jersey and New York and now the Port Authority's new Chairman, Dr. Ronan. We cannot understand how New Jersey can lend its moral pledge to a new sports com-

Exhibit S-15

plex on the one hand, and on the other hand attempt to remove a significant contract with the Port Authority bondholders. Similarly, the lack of good faith apparent in the New York State legislature is shocking when one considers the many billions of dollars of moral obligation financing undertaken by our industry for the state in recent years.

The Municipal Bond Club would anticipate that the municipal bond credit rating services will address themselves to this inappropriate legislative action by the states at the appropriate time. The result may be the lowering of credit ratings in each state which will, in the long run, increase the cost of state government and directly increase taxes imposed upon the citizens of each state. The lack of confidence in the minds of investors, and members of the municipal bond industry, may well preclude the future financing of urgently needed public projects.

The Municipal Bond Club members are confident that another way to finance needed mass transportation facilities in New Jersey and New York exists without jeopardizing the investment of present bondholders. It is indeed distressing that thousands of investors in Port Authority bonds purchased through our member firms as security dealers have been ignored. They have lost principal value through the political maneuvering of the elected officials in New Jersey and New York.

Exhibit S-16

LETTERHEAD OF

W. H. MORTON & CO.

May 29, 1974
Mr. Orville H. Schell, Jr., President
Association of the Bar of the City of New York
42 West 44th Street
New York, New York

Dear Sir:

I have read in the Daily News and in the Daily Bond Buyer of your telegram to Governor Wilson urging that he sign legislation repealing the State's 1962 Covenant with bondholders of the Port Authority. I am shocked that an organization of attorneys would advocate that the State dishonor its commitment.

For your information I enclose copies of a statement by the Securities Industry Association Public Finance Council and a letter to the Governor from the Board of Governors of the Municipal Forum of New York regarding this matter. I hope that when you and your committee have acquainted yourselves with the facts concerning this matter you will withdraw your gratuitous telegram to the Governor.

Very truly yours,

JOHN F. THOMPSON
Vice President

JFT/me
enclosures

Exhibit S-29

MOODY'S INVESTORS SERVICE, INC.

MUNICIPAL CREDIT REPORT

New Issue Report Supplementary
to Report Dated 10-20-71

February 4, 1972

THE PORT OF NEW YORK AUTHORITY

Bond offering: $150,000,000 Consolidated Bonds expected February 9, 1972

Ratings	Numeric	Letter
Air Terminal, Marine Terminal, Gen. & Rfdng.	PRIME 03 (-)	Aa & A (M.T.)
Consolidated Bonds	GOOD (-)07 (-)	A

Description:

Type enterprise : bi-state agency operating facilities in 1,500 square mile Port District in New York and in New Jersey

Facilities : 2 toll tunnels, 4 toll bridges, 3 commercial airports, 1 general aviation airport, 2 heliports, 6 marine terminals, 2 truck terminals, 1 bus station, Hudson Tubes railroad; World Trade Center

Exhibit S-29

Expansion : includes expansion of Kennedy International and Newark Airports, Port Newark and Elizabeth Marine Terminals, new terminals for PATH, expanding bus station, World Trade Center construction

Trade Center cost : remains at $700,000,000 (up $50.0 million from early 1971)

Future projects : planning consolidated passenger ship terminal; authorized by both states to undertake mass transit rail links to both Kennedy International and Newark Airports

Operations (Years ended December 31; $ in 000):

	1969	1970	1971	% Change 1970	% Change 1971
Gross rev. & income	$ 256,436	$ 271,385	$ 300,279	5.8	10.6
Operating expenses	134,297	144,988	175,333	8.0	20.9
Net revenues	122,139	126,397	124,946	3.5	–1.2
Total bond service	51,870	53,667	52,454	3.5	–2.3
Invested in facilities	2,098,196	2,398,502	2,760,810	14.3	15.1
Bond & bank loan debt	1,377,645	1,470,691	1,711,748	6.7	15.1

Historical Key Ratios:

	1969	1970	1971
Net take-down (%)	47.6	46.6	41.6
Interest coverage	4.79	4.80	4.24
Avg. annual bond sv. coverage	1.64	1.52	1.31
Interest safety margin (%)	37.7	36.9	31.8

Future Coverage: 1.18 times by 1971 net on estimated future peak debt service of $105.6 million on outstanding and new bonds

Exhibit S-29

Summary:

The financial strength and technical accomplishments of this Agency continue highly impressive, but it now clearly cannot avoid certain difficulties whose importance is reflected in the reevaluation reflected in the rating changes shown above. Internally, the Authority faces the same cost pressures evident elsewhere, is directly affected by the problems of increasingly complex vehicular congestion both on the ground and in the air, and additionally is prosecuting a large and expensive office building construction program which involves the specialized risks inhering to the real estate development field. Externally it is being pushed (irresistably in our judgment) into large-scale mass transit programs, while concerns about the environment impose as yet undefined problems for airport expansion and even routine operation of the river crossings. New top management is deemed not likely to find these problems either more or less amenable to solution than would the retiring director.

$150,000,000 Consolidated Bonds, Thirty-ninth Series:

Time: bonds to be negotiated for sale on WEDNESDAY, FEBRUARY 9, 1972

Bonds dated: February 1, 1972

Bonds due: February 1, 2007

Purpose: capital expenditures for Authority's airports, docks, wharves, bus terminals, and parking, storing, or training facilities relating to any of these, balance of proceeds if any, not in excess of 10% of proceeds, will be used for capital expenditures in connection with any other facility of the Authority.

Exhibit S-29

Security: payable on a parity with all other Consolidated Bonds by a pledge of net revenues of all existing Authority facilities (not including cars acquired under the State's commuter car program) and any additional facilities financed from Consolidated Bonds; the General Reserve Fund; and the Consolidated Bond Reserve Fund.

Last sale: 10-27-71, $100,000,000 Consolidated Bonds, Thirty-eighth Series, due 2006, at 98.02 NIC 5.4474% (20-Bond Index 5.11%) to group including Salomon Brothers; Merrill Lynch, Pierce, Fenner & Smith; White Weld; W. H. Morton; Weeden; Bear, Stearns.

Mandatory retirement, due August 1 ($ in 000):

1982-85	$ 750	1994-95	$ 6,000
1986-87	1,500	1996-97	7,500
1988-89	1,750	1998	8,000
1990-91	3,000	1999-02	9,000
1992-93	3,500	2003-06	10,500
		2-1-2007	10,500

Debt Service Coverage ($ in 000)

		Last 3 Fiscal Yr. Avg.	Fis. Yr. Ended 12-31-71
Net revenues		$124,369	$124,946
Estimated maximum future requirements:[a]			
Interest	$ 70,727 (1972)	1.76x	1.77x
Amortz. & Int.	105,621 (1986)	1.18	1.18

a. Requirements exclude State-guaranteed commuter car bonds, and amortization payments on the Bank Loans.

Exhibit S-29

Cost of Facility or Authority Investment in Facility, as of 12-31-71 ($ in 000)

Facility	Investment
John F. Kennedy Intl. Airport	$622,500
World Trade Center	545,700
Newark Airport	236,000
George Washington Bridge	213,000
Lincoln Tunnel	196,000
Hudson Tubes Facility (PATH)	167,800
LaGuardia Airport	152,500
Port Newark	131,600
Elizabeth-Port Auth. Marine Term.	125,000
Brooklyn-Port Auth. Marine Term.	95,700
Holland Tunnel	68,800
Port Authority Bus Terminal	59,500
Port Authority Building	23,500
Goethals Bridge	22,600
Bayonne Bridge	18,300
Hoboken-Port Auth. Piers	18,100
Outerbridge Crossing	17,300
Erie Basin-Port Auth. Piers	12,800
Teterboro Airport	11,400
New York Truck Terminal	9,900
Newark Truck Terminal	8,200
Columbia St. Marine Term.	4,200
West 30th Street Heliport	500
Downtown Manhattan Heliport	220

BONDED DEBT: At the end of 1971, the Authority has $1,446,748,000 bonds outstanding, comprising $16,703,000 of 4 series of General and Refunding Bonds, $28,601,000 of 3 series of Air Terminal Bonds, $3,389,000 of 2 series of Marine Terminal Bonds, and $1,398,055,000 of 37 series of Consolidated Bonds. On 12-31-70, the Authority placed in trust with the Trustee amounts available from its Special Reserve Fund, Air Terminal Reserve Fund, and Marine Terminal Reserve Fund sufficient to secure fully, unconditionally, and absolutely the Authority's obligation to provide for redemption and interest until redemption of the General and Refunding, Air Terminal, and Marine Terminal Bonds. With establishment and during maintenance of these trusts, all Consolidated Bonds are secured on a parity by net revenues of all Authority existing facilities and any additional facilities financed wholly or partly through Consolidated Bonds; net revenues are not subject to the prior liens to which net revenues from certain facilities had been subject in favor of General and Refunding, Air Terminal, and Marine Terminal Bonds.

Exhibit S-29

BANK LOANS: at 12-31-71, the Authority also had outstanding $265,000,000 in bank loans, consisting of $105,000,000 balance of a 1968 loan of $210,000,000 due 1973-75, $60,000,000 total of a 1970 loan due annually 1975-77, and $100,000,000 of a July 1971 loan due annually 1975-77. Under terms of the loan agreements and as a result of establishment and maintenance in trust of the Special Reserve Fund, Air Terminal Reserve Fund, and Marine Terminal Reserve Fund, annual installment payments on bank loans beginning in 1971 are to be made exclusively from net revenues available in the Consolidated Bond Reserve Fund. Loan payment and interest on loans is subject to payment of debt service on the General and Refunding, Air Terminal, Marine Terminal, and Consolidated Bonds, and to payment into the General Reserve Fund of the amount needed to maintain this Fund at its requirement of 10% par value of the bonds.

DEBT STRUCTURE and COVERAGE: The current offering of Consolidated Bonds is the largest issue of this type by the Authority and is part of a $200,000,000 authorization of 1-13-72. With inclusion of debt service on the bonds now being offered, estimated overall debt service now ranges

Exhibit S-29

from above $101.0 million annually 1972-87, with a peak of $105.6 million in 1986, and declines thereafter through 2007. Present net revenues exceed estimated peak debt service on the outstanding and new bonds (see page 2), but it is to be noted that the coverage of estimated peak debt service by current net revenues is less than that previously (at the time of the October 1971 bond offering, net revenues for 1970 covered estimated peak debt service 1.31 times).

RECENT DEVELOPMENTS: On December 13, 1971, it was reported that Mr. Austin J. Tobin, Executive Director of the Authority since 1942, announced his retirement from that post effective March 31, 1972. The Authority Commissioners have appointed Mr. Matthias E. Lukens, Deputy Executive Director since 1961, as Acting Executive Director. In late January 1972, Governor Cahill vetoed minutes of the Authority's Commissioners creating the title of Executive Director Emeritus for Mr. Tobin.

There continues to remain one vacancy on the 12-member Commission, following the resignation of one of the New Jersey commissioners in July 1971 following his conviction, along with other public officials including the Mayor of Jersey City, on extortion counts.

AREA DEVELOPMENTS: Effective January 5, 1972, toll rates on the Triborough Bridge and Tunnel Authority's bridges and tunnels were raised substantially, including the doubling of toll rates for most facilities. The higher toll rates were effected in connection with meeting increased costs of rapid transit facilities and service in New York City, under which subway and bus fares also were raised from 30¢ to 35¢. The Triborough's toll facilities act as traffic links on routes which serve as feeders to many of the Port Authority's facilities. Triborough Bridge and Tunnel Authority is now operated by New York State's Metropoli-

Exhibit S-29

tan Transportation Authority (MTA). The Chairman and Chief Executive Officer of MTA is Dr. William J. Ronan; Dr. Ronan is also one of the New York Commissioners of the Port Authority.

OPERATIONS: For 1971, operating data showed moderate increase in traffic on the Authority's toll bridges and tunnels, a small gain in passenger traffic at the 3 commercial airports, small decline in plane movements at these airports, and decline in waterborne tonnage at certain of the marine terminals due most likely to the East Coast dock strike in the fall of 1971. The decline in plane movements and the slight rise on airport passengers may be due to the increased number and frequency of service of the larger jets being used by the air carriers.

Exhibit S-29

	Fiscal Years Ended December 31			% Change	
	1969	1970	1971	1970	1971
Bridge and tunnel traffic (one-way trips):					
Holland Tunnel	19,869,600	20,111,000	20,445,000	1.2	1.7
Lincoln Tunnel	30,977,100	31,507,000	32,193,000	1.7	2.2
Geo. Washington Br.	69,283,000	71,142,300	74,097,000	2.7	4.1
Bayonne Bridge ...	3,669,500	3,743,600	3,818,000	2.0	2.0
Goethals Bridge	15,738,000	17,898,600	19,699,300	13.7	10.1
Outerbridge Csng...	4,079,800	3,878,600	4,109,500	– 4.9	5.9
Total traffic ...	143,617,200	148,281,000	154,361,800	3.2	4.1
% commercial	14.2	13.7	n.a.		
Plane movements at airports:[a]					
Kennedy Inter.	480,557	365,848	340,800	–10.5	– 6.9
La Guardia Airport..	305,227	297,652	318,000	– 2.5	6.7
Newark Airport	234,125	204,595	188,000	–12.6	– 8.3
Total movements	1,019,909	868,095	846,800	–14.9	– 2.5
Passenger traffic at arpts:[a]					
Kennedy Inter.	19,507,694	19,096,705	19,200,000	– 2.1	0.5
La Guardia Airport..	11,736,383	11,845,141	12,725,000	0.9	7.4
Newark Airport	7,130,537	6,460,489	6,100,000	– 9.4	– 5.6
Total passengers	38,374,614	37,402,335	38,025,000	– 2.5	1.7
Bus departures[b]	1,235,000	1,230,000	1,230,000	– 0.4	0.0
PATH passengers	37,751,200	38,954,000	n.a.	3.1	
Waterborne tonnage, long tons:					
Port Newark	4,011,000	4,296,000	3,857,000	7.1	–10.2
Bklyn Marine Term.	1,846,000	1,770,000	1,526,000	– 4.1	–13.8
Eliz. Marine Term.	4,328,000	6,408,000	6,448,000	48.0	0.6

a. Excludes plane movements at Teterboro Airport; movements and passenger traffic are rounded, as reported; passenger traffic at Kennedy International is sum of domestic and international traffic.

b. Bus departures at Port Authority Bus Terminal.

Exhibit S-29

Financial operations for 1971 show a small decline in net revenues as operating expenses rose at a greater rate than the rise in gross revenues. Net revenues, however, continued to provide a good level of coverage on current debt service requirements. The expansion program of the Authority is reflected in the growth of the amount invested in facilities, as well as the rise in debt. Financial operations and financed position data follow ($ in 000).

	Fiscal Years Ended December 31			% Change	
	1969	1970	1971	1970	1972
Financial Operations:					
Gross operating revenues	$ 242,797	$ 255,318	$ 279,935	5.2	9.6
Gross revenue & income	256,436	271,[illegible]	300,279	5.8	10.6
Operating expenses	134,297	144,988	175,333	8.0	20.9
Operating ratio (%)	55.3	56.8	62.6		
Net revenues	$ 122,139	$ 126,397	$ 124,946	3.5	– 1.2
Interest on funded debt	25,507	26,346	29,441	3.3	11.7
Int. & mandatory redemp. pyts.	51,870	53,667	52,454	3.5	– 2.3
Times covered	2.35	2.36	2.38		
Safety margin (%)	27.4	26.8	24.1		
Financial Position Data:					
Invested in facilities	$2,098,196	$2,398,502	$2,760,810	14.3	15.1
General Reserve	120,264	127,069	144,675	5.6	13.8
Ge. & Ref. Special Reserve	9,165	19,268	18,658	110.2	– 3.2
Air Terminal Reserve	19,739	33,069	32,312	67.5	– 2.3
Marine Terminal Reserve	2,219	3,954	3,773	78.2	– 4.6
Consolidated Bond Reserve	—	2,681	253	–	–95.
Total reserve	151,837	186,041	199,671	22.5	7.3
Total bond & note debt	1,202,645	1,270,691	1,446,748	5.6	13.6
Bank loans	175,000	200,000	265,000	14.3	32.5
Total debt	1,377,645	1,470,691	1,711,748	6.7	15.2

Exhibit S-29

OTHER DEVELOPMENTS: Our October 20, 1971, report commented on various actions or litigations pending with respect to certain of the Authority's facilities or for certain statutory provisions.

In November 1969, a lawsuit instituted in New Jersey Superior Court, Chancery Division, Bergen County, against the Authority, Pan American World Airways, and the State's bureau of Aeronautics by South Hackensack Township, its Board of Education, and 2 Township residents sought declaratory judgment that the 1967 agreement between the Authority and Pan American for Pan American's operation of Teterboro Airport as a public airport constitutes an unlawful transfer of a public facility to private use and airport operation is illegal because it is not licensed by the Bureau. On 11-5-70, defendants' motions for summary judgment were granted, and a judgment dismissing the amended complaint was entered. On 11-29-71, the Appellate Division of the Superior Court affirmed the judgment of the Chancery Division, and the time for further appeals from the Division's decision has now expired.

Exhibit S-31

MOODY'S INVESTORS SERVICE, INC.
MUNICIPAL CREDIT REPORT

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
Rating: Consolidated Bonds: A

June 14, 1973
RC

Sale: $100,000,000 Consolidated Bonds, Fortieth Series, for bids on 6-20-73

Dated: 6-1-73 Due: 6-1-2008 Call: beginning in 1983

L.O.: Hawkins, Delafield & Wood, New York City

Type enterprise:	bi-state agency operating 2 toll tunnels, 4 toll bridges, 3 commercial airports, 1 general aviation airport, 2 heliports, 6 marine terminals, 2 truck terminals, 1 bus station, PATH passenger rail facilitiy, World Trade Center in 1,500 square mile Port District
Pledged revenues:	Consolidated Bonds payable on parity from net revenues of all existing facilities of Authority and any additional facilities financed from Consolidated Bonds, the Authority's General Reserve Fund, and the Consolidated Bond Reserve Fund
Coverage after sale:	net revenues for 1972 cover estimated peak interest and amortization on outstanding and new Consolidated Bonds by 1.25 times.

Exhibit S-31

Operations (years ended 12-31; $ in 000):

	1970	1971	1972	% Change 1971	% Change 1972
Gross revenues	$ 271,385	$ 300,279	$ 339,618	10.6	13.1
Operating expenses	144,988	175,333	199,161	20.9	13.6
Net revenues	126,397	124,946	140,475	-1.2	12.4
Total debt service	53,667	52,454	63,358	-2.3	20.8
Invested in facilities	2,398,502	2,760,810	3,047,507	15.1	10.4
Bond & bank loan debt	1,470,691	1,711,748	1,796,810	15.1	5.0

Historical Key Ratios:	1970	1971	1972
Operating ratio (%)	56.8	62.6	62.3
Net take-down (%)	46.6	41.6	41.3
Interest coverage	4.80	4.24	3.61
Avg. annual debt sv. coverage	1.52	1.31	1.23
Interest safety margin (%)	36.9	31.8	29.9

Summary: The Authority's financial strength and technical accomplishments continue highly impressive. The Authority has expanded capacity of all its facilities, and further expansion of its marine terminal and air terminals is underway. In addition, the Authority is completing a large and expansive office building construction (World Trade Center), a program which involves the specialized risks inhering to the real estate development field. Its facilities, as is the case with comparable facilities elsewhere, are sensitive to economic, labor, and environmental conditions that can favorably or unfavorably affect their usage, but the earnings derived from these facilities remain at good levels.

Legislation in both states has been enacted in which the Authority will contribute in the capital cost of passenger

Exhibit S-31

rail projects to link Kennedy International Airport with Manhattan, link Newark International Airport with Newark and extend the PATH system into Union County in New Jersey, and provide a direct rail connection to Manhattan for Erie-Lackawanna rail users in New Jersey. In addition, this new legislation amends 1962 statutes which served as the basis for a statutory covenant limiting the Authority's ability to participate in deficit passenger railroad projects. These deficit limitations will not apply to the holders of bonds hereafter issued by the Authority, including these bonds. It is noted that none of the proceeds of these bonds are for any of these passenger rail projects, and the Authority indicates that these rail projects financed from their portion of the capital funds are anticipated to be self-supporting.

Bonded Debt: At the end of 1972, the Authority had $1,566,810,000 bonds outstanding, comprising $15,852,000 of 4 series of General and Refunding Bonds, $24,641,000 of 3 series of Air Terminal Bonds, $2,983,000 of 2 series of Marine Terminal Bonds, and $1,523,334,000 of 38 series of Consolidated Bonds. On 12-31-70, the Authority placed in trust with the Trustee amounts available from its Special Reserve Fund, Air Terminal Reserve Fund, and Marine Terminal Reserve Fund sufficient moneys to secure fully, unconditionally, and absolutely the Authority's obligation to provide for redemption and interest until redemption of the General and Refunding, Air Terminal, and Marine Terminal Bonds. With establishment and during maintenance of these trusts, all Consolidated Bonds are secured on a parity by net revenues of all Authority existing facilities and any additional facilities financed wholly or partly through Consolidated Bonds (excluding cars financed under N.Y. State Commuter car program) net revenues are not

Exhibit S-31

subject to the prior liens to which net revenues from certain facilities had been subject in favor of General and Refunding Air Terminal, and Marine Terminal Bonds.

As of 5-23-73, there were $1,618,584,000 of Consolidated Bonds outstanding, but including $100,000,000 of Series Z Consolidated Notes of 3.60% interest due 12-17-73.

Bank loans: At 12-31-72, the Authority also had outstanding $230,000,000 in bank loans, consisting of $70,000,000 balance of a 1968 loan of $210,000,000 due 1974-75, $60,000,000 total of a 1970 loan due annually 1975-77, and $100,000,000 of a July 1971 loan due annually 1975-77. Under terms of the loan agreements and as a result of establishment and maintenance in trust of the Special Reserve Fund, Air Terminal Reserve Fund, and Marine Terminal Reserve Fund, annual installment payments on bank loans beginning in 1971 are to be made exclusively from net revenues available in the Consolidated Bond Reserve Fund. Loan payment and interest on loans is subject to payment of debt service on the General and Refunding, Air Terminal, Marine Terminal, and Consolidated Bonds, and to payment into the General Reserve Fund of the amount needed to maintain this Fund at its requirement of 10% par value of the bonds.

Structure: These Consolidated Bonds are due in 2008 with mandatory retirement beginning annually in 1983. Estimated overall interest and amortization on the Consolidated Bonds is at a high of over $110 million in certain years in the 1973-86 period, with debt service declining under $100 million in 1993, as shown for selected years ($ in 000):

Exhibit S-31

Year	Amortization	Interest	Total
1973	$32,112	$74,377	$105,489
1974	34,119	75,916	110,035
1975	35,886	74,782	110,668
1976	35,236	73,633	108,869
1977	36,475	72,474	108,949
1980	41,671	68,432	110,103
1986	54,223	58,255	112,478
1992	55,550	44,661	100,211
1998	57,500	27,043	84,543
2008	7,000	175	7,175

Coverage ($ in 000):

	Last 3 Fiscal Yr. Avg.	Fs. Yr. Ended 12-31-72
Net revenues	$130,600	$140,457
Est. peak interest:		
$75,916 in 1974	1.72x	1.85x
Est. peak prin. and int.:		
$112,478 in 1986	1.16	1.25

Statutory covenant against dilution of pledged revenues: A paragraph which appeared in the official statement for the Thirty-ninth Series of Consolidated Bonds which sold in February 1972, and which bonds are due in 2007, indicated that in connection with legislation which authorized the Authority to assume responsibility for the Hudson Tubes system (PATH), the Authority advised the Legislatures of both states that its credit would be impaired by such an undertaking of an anticipated perpetual deficit facility unless the states would enter into an enforceable contract with the Authority bondholders which would grant assurances against dilution of already pledged revenues and reserves by any additional passenger rail deficits

beyond those of the Hudson Tubes system. The legislation as finally adopted included these covenants. The contract prohibits the application of any revenues or reserves pledged to the bonds (which includes all existing revenues, other than rentals under the New York State commuter railroad car program, and all existing reserves) for any additional passenger railroad purpose beyond the basic Hudson Tubes, as defined, without the consent of the holders of the affected bonds unless the Authority shall have first certified the eligibility of the additional railroad, whether an extension of the Hudson Tubes or a new railroad facility. To be eligible, the Authority must determine that either the proposed additional passenger railroad facility is self-supporting or, if not, that at the end of the preceding calendar year the General Reserve Fund contained the full statutory amount and that for the ensuing 10 years the estimated average annual deficits from the proposed additional passenger railroad facility and any existing railroad facility (including the Hudson Tubes) would not in the aggregate exceed an amount equal to 1/10 of the amount in the General Reserve Fund at the prior year-end.

The statutory covenant against dilution of pledged revenues and reserves by additional passenger railroad facilities remains in effect with respect to affected bonds and remains binding on the Authority, although it does not apply to the bonds of the present Fortieth Series offering. The legislation which authorized the Authority to assume responsibility for the Hudson Tubes was amended effective 5-10-73 by New York and New Jersey. The New Jersey amendment, when introduced in the N.J. Assembly, was accompanied by a statement that the bill was intended to preclude the application of the covenant to holders of bonds

newly issued after its effective date, while maintaining in status quo the rights of the holders of bonds issued after 3-27-62 (effective date of the covenant legislation) but prior to the effective date of the amendment.

Prior to the effective date of this amendatory legislation, 16 banks, in connection with the issuance of the Series Z notes, each consented pursuant to 1962 legislation to the application for any railroad purpose authorized by the states of any revenues and reserves which have been or shall be pledged as security for the notes, in-so-far as the application would otherwise not have been permitted by reason of the limitation imposed by the statutory covenant. In accordance with the policies of both Governors and the Authority, the consent by the purchasers of Series Z notes resulted in precluding the addition of the notes to the total amount of outstanding obligations to which the statutory amendment attaches. The need for a similar consent by the purchasers of bonds of this Fortieth Series is obviated by the amendatory legislation which precludes application of the covenant to all obligations issued after 5-1-73.

It is presently intended that passenger railroad facilities authorized by that legislation be effectuated on a self-supporting basis, including substantial amounts of governmental financial aid. The total estimated cost of these rail facilities is estimated at $650,000,000 of which about $250,000,000—$300,000,000 would be financed by the Authority, with the balance to be funded from Federal and state capital grants. The Authority indicated that PATH would be the operator of the extension from Penn Station in Newark to Newark International Airport and to Plainfield in Union County, that the Long Island Railroad would operate the Penn Station-Kennedy International Airport rail link, and that the Erie-Lackawanna Railroad would operate the direct connection from Erie-Lackawanna lines in New Jersey into Penn Station in New York. The

Exhibit S-31

Authority has indicated that while the total facilities financed by the $300,000,000 capital funds are not anticipated to be self-supporting, the portion of the projects financed by the $250,000,0000-$300,000,000 Authority moneys is anticipated to be self-supporting.

The statutes which authorize rail access to Kennedy International and Newark International contains a legislative finding that these mass transportation facilities can properly be regarded as constituting a part of each air terminal, the development of which should be the responsibility of those charged with the duties of air terminal development. Bond Counsel for the Authority is of the opinion that unless the rail access projects were to meet the requirements of a permitted purpose within the meaning of the 1962 legislation, any financing of all or part of it provided by the Authority under its existing bond resolutions would constitute a violation of the statutory covenant.

Authority: The Port Authority of New York and New Jersey (its name was changed effective 7-1-72 by legislation in both states from the former Port of New York Authority) is a municipal corporate instrumentality of New York and New Jersey, created in 1921, by compact between the two states, with the consent of Congress, and provides facilities in the Port District of about 1,500 square miles which centers about New York Harbor. The Authority consists of 12 commissioners, 6 from each state, appointed by the Governor with the advice and consent of the Senate for 6-year terms. The Authority staff is now headed by Mr. Matthias E. Lukens, Acting Executive Director, appointed to this positon following the retirement on 3-31-72 of Mr. Austin J. Tobin, who had been Authority Executive Director since 1942.

Existing facilities: Authority operates: (1) all inter-state vehicular tunnels and bridges in Port District consisting of Holland Tunnel, Lincoln Tunnel, George Washington

Exhibit S-31

Bridge, Goethals Bridge, Bayonne Bridge, Outerbridge Crossing; (2) air terminal facilities consisting of John F. Kennedy International Airport, LaGuardia Airport, Newark International Airport for commercial service, and Teterboro Airport for general aviation, and heliports in downtown and midtown Manhattan; (3) marine terminal consisting of Columbia Street Marine Terminal, Port Newark, Brooklyn Port Authority Marine Terminal, Hoboken-Port Authority Marine Terminal, Erie Basin-Port Authority Marine Terminal, and Elizabeth-Port Authority Marine Terminal; (4) inland terminals consisting of the Port Authority Building, Port Authority Bus Terminal, New York Union Motor Truck Terminal, Newark Union Motor Truck Terminal, and George Washington Bus Station; (5) the Hudson Tubes railroad facility operated by the wholly-owned subsidiary PATH corporation, and (6) the World Trade Center.

Expansion: Expansion of Authority facilities include: (1) at Kennedy International expenditures by Authority and airlines to expand the International Arrival Building and Wing Building and development of a maintenance facility under which Authority expenditures in 1973 will be about $23,400,000; (2) at Newark International, a $220,-000,000 redevelopment program under which a new runway was placed in operation in 1970 and construction of 3 new terminals are proceeding; (3) at Port Newark, development of the south side of the Port along a new channel which adjoins the Elizabeth Marine Terminal in which 8 berths have been built and 2 additional berths are to be completed in 1973, and in September 1972, Authority authorized agreement with Penn Central to lease about 95 acres of undeveloped land adjoining Port Newark for a 40-year term, on which the Authority plans to build distribution buildings and pave open area at an estimated $19,000,000 cost; (4) at Elizabeth-Port Authority Marine

Exhibit S-31

Terminal, lease agreements with the Jersey Central covering 246 acres of adjoining undeveloped land executed under 1971 and 1972 lease agreements to provide additional distribution space for future containerized cargo terminals with an estimated Authority investment of $38,600,000; (5) an expansion program of the Port Authority Bus Terminal, for which $7,600,000 has been expended for land acquisition; (6) a new Journal Square transportation center in Jersey City, and a 1972 memorandum of intent between Authority and Penn Central for Authority to rehabilitate Penn Station in Newark for an estimated $12,300,000; and (7) the World Trade Center.

World Trade Center in lower Manhattan comprises twin 110-story tower buildings each 1,350 feet high surrounded by lowrise plaza buildings. At the end of 1972, more than 300 firms and organizations involved in international trade were housed in the Center. Occupancy of the North Tower began in December 1970 and the South Tower in April 1972. Despite a construction strike in the last half of 1972, tenants moved into the Northeast Plaza Building. Taking into consideration unanticipated increases in construction costs, it is presently estimated that the total cost of the World Trade Center will be about $800,000,000, an amount $100,000,000 greater than that indicated prior to the February 1972 bond offering, and $150,000,000 greater than that indicated prior to 1970 and 1971 bond offerings, and also greater than total cost estimated of $600,000,000 earlier in 1970, of $575,000,000 of a 1967 estimate, and of $525,000,000 of a 1965 estimate. Cost increases have been due to delays caused by construction, escalation, increased construction costs, and final modifications and additions to the low-rise buildings.

Additional facilities: In August 1971, the Authority and New York City executed a lease agreement for construction, financing, and leasing of a Consolidated Passenger

Exhibit S-31

Ship Terminal on the west side of Manhattan. The agreement provides that the Authority will build the terminal, lease it from the City for 20 years and finance related parking facilities at a $2,000,000 cost with the City to finance the balance of about $35,900,000. Part of the permanent facility and certain existing piers were repairs to provide interim facilities until completion of the new Terminal in the spring of 1974. Charges for passenger vessel use of the terminal are governed by tariffs calculated to make the project self-supporting over the lease term, which are published by the Authority and filed with the FMC.

On 2-8-73, the Authority Commissioners authorized construction and operation of a container cargo development project in the Red Hook section of Brooklyn on about 30 acres owned by the Authority and about 72 acres to be leased by the Authority from New York City. The Authority would lease the 72 acres for a term beginning with delivery of the first parcel and continuing for 50 years after delivery of all parcels. City would pay entire estimated construction cost of $29,000,000, and Authority pay to City a basic rental of about $2,152,000 annually over a 50-year period. If revenues also exceed base rent plus provision for Authority expenses, 50% of the excess is payable to the City.

The mass transportation rail project authorized by the states in the 1971-73 period will provide for: (1) PATH rail link connecting Newark International Airport and Penn Station in Newark; (2) extend PATH into Union County to Plainfield via Newark International Airport; (3) direct rail service to Penn Station in Manhattan for Erie-Lackawanna riders including equipment yard in Seacaucus and a new Hackensack River Bridge. These projects are expected to be completed by the end of 1977, as well as the rail link from Manhattan to Kennedy International.

Exhibit S-31

	Fiscal Years Ended Dec. 31			% Change	
	1970	1971	1972	1971	1972
Operations:					
Total bridges & tunnels:					
Traffic (000)	148,281	154,362	159,476	4.1	3.3
Toll revenues (000)	$ 75,891	$ 78,492	$ 80,620	3.4	2.7
Commercial airports:					
Plane movements	868,095	846,800	860,000	– 2.5	1.5
Total passengers (000)	37,402	38,025	41,713	1.7	9.7
PATH passengers (000)	38,954	38,877	40,282	– 0.2	3.6
All marine terminals:					
Ship arrivals	N.R.	3,428	3,979	—	16.1
General cargo, long tons (000)	12,309	11,339	12,183	– 7.9	7.4
Financial Operations ($ in 000):					
Gross operating revenue	$ 255,318	$ 279,935	$ 319,835	9.6	14.2
Gross revenue & income	271,385	300,279	339,618	10.6	13.1
Oper. & maint. expense	144,988	175,333	199,161	20.9	13.6
Net revenues	126,397	124,946	140,457	– 1.2	12.4
Interest on funded debt	26,346	29,441	38,856	11.7	32.0
Int. & mandatory redemp. pyts.	53,667	52,454	63,358	– 2.3	20.8
Times covered	2.36	2.38	2.22	—	—
Safety margin (%)	26.8	24.1	22.7	—	—
Balance sheet ($ in 000):					
Invested in facilities ...	$2,398,502	$2,760,810	$3,047,507	15.1	10.4
General Reserve	127,069	144,675	156,681	13.8	6.3
Gen. & ref. Spec. Reserve	19,268	18,658	17,551	– 3.2	– 5.9
Air Terminal reserve ..	33,069	32,212	27,489	– 2.3	–24.7
Marine Terminal reserve	3,954	3,773	3,280	– 4.6	–23.1
Consolidated Bond reserve	2,681	253	7,101	–95.7	—
Total reserves	186,041	199,671	212,102	7.3	6.2
Total bond & note debt	1,270,691	1,446,748	1,566,810	13.8	6.3
Bank loans	200,000	265,000	230,000	32.5	–23.2
Total debt	1,470,691	1,711,748	1,796,810	15.1	5.0

Largest components of investment in facilities, 12-31-72:

World Trade Center	$659,500,000
Kennedy International	653,200,000
Newark International	276,200,000
George Washington Bridge	213,000,000
Hudson Tubes (PATH)	199,400,000
Lincoln Tunnel	198,000,000

Exhibit S-31

Recent Developments: The PATH system was struck and non-operating for about a 2-month period from 4-1-73 to 6-3-73. On 6-14-73, PATH announced an increase in the basic fare from 30¢ to 50¢ effective 7-29-73.

Other Developments: Various actions or litigation are pending with respect to certain of the Authority's facilities or for certain statutory provisions.

On 7-20-70, the New York State Attorney General instituted a lawsuit on behalf of the State of New York Supreme Court, Nassau County, against the Authority and 58 foreign and domestic airlines using La Guardia and Kennedy International Airports. The action seeks to require, and directs the Authority to require, air carriers operating jets to equip their aircraft with noise suppressors to reduce aircraft noise outside the boundaries of the airports to specified levels. Research, development, and testing of methods to reduce aircraft noise is being conducted by aircraft manufacturers and the Federal Government.

On 7-30-70, the Attorney General also instituted a lawsuit on behalf of the State in New York Supreme Court, New York County, alleging that the Authority has caused or permitted fuel oil to be discharged into Jamaica Bay through the storm and sanitary sewer system at Kennedy International and, by extending a runway into the Bay, has interfered with normal tidal flows to disrupt the Bay's ecology, and seeking to enjoin the alleged discharge and the alleged disruption of the ecology.

In December 1961, owners of properties instituted an action in Supreme Court, Queens County, against the Authority and 38 airlines operating out of Kennedy International, alleging that airport noise diminished the value of their properties. As against the Authority, plaintiffs seek to recover alleged damages of 20% of the market value of their properties, and for a period prior to the action, alleged

Exhibit S-31

damages of 20% of rental value of properties. With respect to the Authority, allegations that flights constitute trespass, nuisance, and governmental taking of private property have been held by the State trial and appellate courts to be barred for the period prior to December 1960.

In May, 1967, President of the N.Y. District Council of the ILA began a suit against the United States, Authority, and New York City in a U.S. District Court seeking to prevent effectuation of the World Trade Center, the plaintiff contending that demolition of piers in construction of the Center violated "rights" of ILA members to be employed on waterfront property. On 3-28-72, the District Court dismissed the action against all parties, the U.S. Court of Appeals for the Second Circuit affirmed the District Court judgment on 10-30-72, and plaintiffs' petition for a writ of certiorari to review the decision was denied by the U.S. Supreme Court on 4-16-73.

Still technically pending is litigation instituted in September 1964 by plaintiffs and intervenors who sought to prevent effectuation of the Center and alleged, among other things, that the legislation authorizing the Center is unconstitutional. Their complaint as to these issues was incorporated into a 1965 litigation where these constitutional challenges were rejected. Intervenors appealed to the Appellate Division of the Court from the New York State Supreme Court's dismissal of portions of their complaint demanding an injunction against the taking of their property on the site of the Center. Title to the properties vested finally in the Authority by order of the Supreme Court, New York County, which was affirmed in a July 1966 Court of Appeals decision.

On 3-4-71 and 3-9-71; identical class actions were begun in the U.S. District Court for the Southern District of New York and the U.S. District Court for the District of New

Exhibit S-31

Jersey against the Authority, each of its Commissioners, and its Executive Director challenging the validity of the 1962 covenant against dilution of pledged revenues and reserves by additional passenger railroad deficits. The plaintiffs further sought an order requiring the Authority to formulate and submit to the Court, or to a special master to be appointed by the Court, a plan for development of mass transportation facilities in the Port District as requested by both Governors.

On 4-23-71, the Authority, its Commissioners and Executive Director, and Governor of New York jointly moved to dismiss the New York Action on the grounds that the plaintiffs failed to state a cause of action on which relief can be granted and that the Federal Court lacked jurisdiction. On 5-28-71, parties in the New York action stipulated to dismiss the action as to Governor Rockefeller and to permit the State's Attorney General to intervene in support of the constitutionality of the 1962 covenant. The U.S. District Court for the Southern District granted defendants' motion to dismiss the complaint on 7-28-71, the U.S. Court of Appeals for the Second Circuit affirmed this judgment on 3-24-72, rehearing was denied on 5-30-72, and plaintiff's petition for writ of certiorari to review the Court of Appeals decision was denied by the U.S. Supreme Court on 11-6-72. The action instituted in the U.S. District Court for the District of New Jersey was administratively terminated pending final dismissal of the New York action, and no further proceedings have been initiated.

Complaints containing substantially identical allegations and asking relief similar to that sought in the complaints in the Federal actions were filed in the Superior Court of New Jersey, Law Division, Bergen County, in May 1972, and in New York Supreme Court, New York County, in

Exhibit S-31

January 1973. In the New Jersey action, the plaintiff is described as a New Jersey resident, and defendants named were the Authority, its Commissioners, and Governor of New Jersey. On motion made by New Jersey's Attorney General, the complaint was dismissed as to Governor Cahill. The New York action has been instituted in the form of a class action against the Authority as sole defendant by one named plaintiff who was also a plaintiff in the New York action filed in the Federal court in 1971. Both state court actions are still pending.

Excerpt from Exhibit S-36

Dated: November 16, 1970 BLYTH & Co., INC.

Preliminary Circular—Subject to change

New Issue—To be negotiated

Moody's Rating—A

Standard & Poor's Rating—

$50,000,000

THE PORT OF NEW YORK AUTHORITY

CONSOLIDATED BONDS

THIRTY-SIXTH SERIES—(FIRST INSTALLMENT)

Dated: November 1, 1970

Due: November 1, 2005, as shown below

The Thirty-Sixth Series Bonds becoming due on November 1, 1981 and on any date thereafter are redeemable prior to maturity, both at the option of The Authority and according to a fixed schedule for mandatory periodic retirement, on November 1, 1980 and on any interest payment date thereafter, in whole or in part, at the following redemption prices specified below, plus accrued interest.

Redemption Dates (Both Dates Inclusive)	Redemption Prices: Optional Redemption	Redemption Prices: Mandatory Redemption
November 1, 1980 to November 1, 1982;	104%	103%
Thereafter to November 1, 1985;	103%	102%
Thereafter to November 1, 1988;	102%	101%
Thereafter to November 1, 1991;	101%	100%
Thereafter to maturity	100%	100%

Principal and semi-annual interest (May 1 and November 1) payable at the principal office .

Coupon Bonds, in the denomination of $5,000; or as fully registered Bonds, in the denomination of $5,000 or multiples thereof.

Excerpt from Exhibit S-36

General Counsel and Bond Counsel are of the opinion that, under the Constitution of the United States of America now in force, interest on The Port of New York Authority Consolidated Bonds, Thirty-sixth Series, First Installment, presently being offered for sale, is exempt from all income taxes now or hereafter imposed by the United States unless such taxes should be consented to by the States of New York and New Jersey and that such interest is, under the existing Acts of Congress, exempt from present Federal income taxes, provided, however, that no opinion is expressed herein with respect to the exemption from taxation of interest on any Bond or Bonds of said Thirty-sixth Series, First Installment, for any period during which such Bond or Bonds are held by a substantial user (or a related person) of airport, dock, wharf, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing, provided by the Authority from the proceeds of the Bonds, within the meaning of Section 103 (c) (7) of the Internal Revenue Code. General Counsel and Bond Counsel are also of the opinion that the said bonds and the interest thereon are exempt, under the existing Compact and supplementary legislation, from any and all taxation (except estate, inheritance and gift taxes) now or hereafter imposed thereon by or under authority of the State of New York or the State of New Jersey or by any political subdivision thereof.

AMOUNT, RATE, MATURITY, PRICE

$50,000,000 .....% Term Bonds
due November 1, 2005 .....%
(Plus Accrued Interest)

The Thirty-Sixth Series Bonds are being offered for the purpose of financing capital expenditures in connection with the Authority's airports, docks, wharves, mass commuting facilities, parking facilities and storage or training facilities, and for refunding all or any part of outstanding Consolidated Notes, Series W and Series X, substantially all of which have been issued for the aforesaid purpose. No part of the proceeds of the First Installment of Consolidated Bonds Thirty-Sixth Series shall be used for the Port of New York Authority World Trade Center.

Excerpt from Exhibit S-36

The Bonds shall be direct and general obligations of the Authority, for which the full faith and credit of the Authority are pledged, secured equally and ratably with all other Consolidated Bonds heretofore or hereafter issued by a pledge of (a) the net revenues of the Authority from the Hoboken-Port Authority Marine Terminal, the Brooklyn-Port Authority Marine Terminal, the Erie Basin-Port Authority Marine Terminal, the Elizabeth-Port Authority Marine Terminal, The Port Authority-West 30th Street Heliport, the Port Authority-Downtown Manhattan Heliport, the Hudson Tubes (also known as Port Authority Trans-Hudson or "PATH"), the World Trade Center (after construction) and any additional facilities which may hereafter be financed or refinanced in whole or in part through the medium of Consolidated Bonds, (b) the net revenues of the Authority from all other of its existing facilities (not including cars acquired under New York State's Commuter Car Program,) subject to (but only to) pledges heretofore made and liens heretofore created in favor of outstanding General and Refunding Bonds, Air Terminal Bonds and Marine Terminal Bonds, (c) the General Reserve Fund of the Authority (authorized by Chapter 5 of Laws of New Jersey of 1931 and Chapter 48 of the Laws of New York of 1931, as amended) equally with other obligations of the Authority secured by that Fund, and (d) the Consolidated Bond Reserve Fund established in connection with Consolidated Bonds.

The Thirty-Sixth Series Bonds are offered when, as and if issued, and subject to the approval of Sidney Goldstein,

Excerpt from Exhibit S-36

General Counsel of the Authority and by Hawkins, Delafield & Wood, Bond Counsel for the Authority. Delivery of the Bonds is anticipated on or about .

Description of The Port Authority

The Port Authority is a municipal corporate instrumentality of the States of New York and New Jersey, created in 1921 by Compact between the two States, with the consent of the Congress of the United States. In the Compact the two States recited their confident belief that a better coordination of the terminal, transportation and other facilities of commerce in the Port of New York would result in great economies benefiting the nation as well as the States and that the future development of such facilities would require the cordial cooperation of the States in the encouragement of the investment of capital and in the formulation and execution of necessary plans. They recited that such result could best be accomplished through the cooperation of the two States by and through a joint or common agency, and to that end, after pledging, each to the other, faithful cooperation in the future planning and development of the Port of New York, they created the Port of New York District and The Port of New York Authority.

In general, the purpose of the States in establishing the Authority was to provide transportation, terminal and other facilities of commerce within the Port of New York District and for such purposes they have from time to time authorized specific facilities and have given the Authority power to borrow money upon its bonds or other obligations and to make charges for the use of such facilities. The Port District comprises an area of about 1,500 square miles in both States, centering about New York Harbor. The Port District includes the Cities of New York and Yonkers in New York State, Newark and Jersey City in New Jersey and over 200 other municipalities, including all or part of seventeen counties, in the two States.

Excerpt from Exhibit S-36

Purpose

Capital expenditures in connection with the Authority's airports, docks, wharves, mass commuting facilities, parking facilities and storage or training facilities directly related to any of the foregoing and for refunding all or any part of outstanding (a) Consolidated Notes, Series W, issued for the aforesaid purposes, and (b) Consolidated Notes, Series X, substantially all of which have been issued for the aforesaid purposes, with the balance of the proceeds of such Series X Notes, if any, to be used for purposes of capital expenditures in connection with the Authority's tunnels and bridges. No part of the proceeds of the First Installment of Consolidated Bonds, Thirty-sixth Series, shall be used for the World Trade Center nor for any Authority facilities except those specified above or for which said outstanding Consolidated Notes have been issued.

Security

Consolidated Bonds are direct and general obligations of the Authority and the full faith and credit of the Authority are pledged to the payment of debt service thereon.

Consolidated Bonds may be issued from time to time in such series and installments (in addition to the present offering) as the Authority may determine, but only for purposes for which the Authority is authorized by law to issue bonds secured by a pledge of its General Reserve Fund. So long as any bonds of the present offering are outstanding, Consolidated Bonds may be issued for purposes in connection with additional facilities (in addition to those for which it has already issued bonds secured by a pledge of the General Reserve Fund) only if the Authority has first certified its opinion that such issuance will not, among other things, materially impair its ability to fulfill its undertakings to the holders of Consolidated Bonds.

The Authority may not issue any Consolidated Bonds (except bonds issued to refund other Consolidated Bonds or

bonds of prior issues now outstanding) except under one or another of three conditions, each of which requires that a certain future calendar year's debt service is met one and three-tenths (1.3) times by certain revenues.

All Consolidated Bonds, including any which may hereafter be issued, are equally and ratably secured by a pledge of the net revenues of the following facilities in the manner and to the extent provided in the Consolidated Bond Resolution: (a) the Hoboken-Port Authority Marine Terminal, the Elizabeth-Port Authority Marine Terminal, the Port Authority-West 30th Street Heliport, the Port Authority-Downtown Manhattan Heliport, the Hudson Tubes, and the World Trade Center (after construction), (b) the Port Authority's existing six bridges and tunnels, two union motor truck terminals, bus terminal, Columbia Street Marine Terminal, and Inland Terminal No. 1, subject to the pledge heretofore made of such revenues in favor of General and Refunding Bonds, (c) the Port Authority's other existing four air terminals, subject to the pledge heretofore made of such revenues in favor of Air Terminal Bonds, (d) Port Newark, subject to the pledge heretofore made of such revenues in favor of Marine Terminal Bonds, and (e) any additional facility which may be hereafter financed in whole or in part through the medium of Consolidated Bonds. So long as any bonds of a prior issue remain outstanding which have a first lien on the net revenues of any existing facility, such revenues must be applied as provided in the resolution establishing such prior issue. The application of net revenues prescribed in each such resolution is for payment of the debt service upon all bonds of such prior issue, with all remaining balances payable into a special reserve fund established by such resolution for bonds of such prior issue except such amounts as may be necessary to maintain the General Reserve Fund in its statutory amount. To the extent legally available and necessary for such purpose, amounts in such

special reserve funds, and in the Consolidated Bond Reserve Fund described below, are to be applied to the payment of debt service on the bank loan referred to hereinafter. The bank loan contemplates that upon providing in trust for the payment in full of principal and interest to the respective sinking fund redemption dates of the Authority's General and Refunding Bonds, Air Terminal Bonds and Marine Terminal Bonds, the net revenues from the above mentioned facilities will be applied to debt service on the Consolidated Bonds and Notes and all remaining balances, except such amounts as may be necessary to maintain the General Reserve Fund in the prescribed amount, will be paid into the Consolidated Bond Reserve Fund. It is presently expected that such payments in trust will be made by year end 1970. Under the terms of the loan, no Authority bonds would have to be paid or redeemed in advance of their scheduled redemption.

All Consolidated Bonds are further secured by a pledge of the moneys in the Consolidated Bond Reserve Fund established by the Consolidated Bond Resolution, in the manner and to the extent set forth therein, and by a pledge of the General Reserve Fund on an equal footing with other obligations of the Authority, in the manner and to the extent provided therein.

The Consolidated Bond Reserve Fund

A special fund is created by the Consolidated Bond Resolution as additional security for all Consolidated Bonds. Into this fund is to be paid the balance of all net revenues upon which at the time Consolidated Bonds have a first lien, except such amounts as may be required to maintain the General Reserve Fund at its statutory amount.

The moneys in the Consolidated Bond Reserve Fund may be accumulated or applied only to the purposes stated in the Consolidated Bond Resolution, which include the payment of debt service and retirement of Consolidated Bonds

Excerpt from Exhibit S-36

(with certain limitations) and other purposes. The other purposes, so long as any bonds of the present offering are outstanding, must be related to bonds secured by a pledge of the General Reserve Fund or facilities financed by such bonds, but not necessarily related to Consolidated Bonds, or facilities the net revenues of which are pledged in support of Consolidated Bonds. Moneys in the Consolidated Bond Reserve Fund may be applied to the payment of debt service on the bank loan described hereinafter.

THE GENERAL RESERVE FUND

The General Reserve Fund was established pursuant to Chapter 5 of the Laws of New Jersey of 1931 and Chapter 48 of the Laws of New York of 1931, which have been amended and supplemented.

Under the statutes authorizing the pledge of the General Reserve Fund, in all cases where the Authority has raised or may raise moneys to finance or refinance any of its present facilities, or any additional terminal or transportation facilities by the issue and sale of bonds legal for investment as limited and defined in the applicable statutes, the surplus revenues, as defined therein, from such facilities are required to be pooled by the Authority and applied to the establishment and maintenance of a General Reserve Fund in an amount equal to 10% of the par value of all such outstanding bonds legal for investment, as so defined. The Bonds of the present offering will be, and all of the outstanding bonds and notes of the Authority, other than the State Guaranteed Commuter Car Bonds and the bank loans described hereinafter, are, bonds legal for investment within the statutory definitions; also all of the Authority's existing facilities (not including cars acquired under the aforesaid New York State Commuter Car Program) have been financed in whole or in part by bonds legal for investment within the meaning of the General Reserve Fund statutes.

Excerpt from Exhibit S-36

The statutes permit the General Reserve Fund to be pledged in whole or in part by the Authority or applied by it to the repayment with interest of any moneys raised upon any such bonds legal for investment, and permit the Authority to apply such moneys in the General Reserve Fund to the fulfillment of any other undertaking assumed to or for the benefit of the holders of any such bonds.

The Authority's power to use and invest the moneys in the General Reserve Fund at any time is curtailed within narrower limits under existing agreements that the maximum which the statutes permit (without impairing, however, any pledge heretofore made in favor of holders of General and Refunding, Air Terminal and Marine Terminal Bonds). Application of the General Reserve Fund is by such agreement restricted to purposes in connection with bonds secured by a pledge of the General Reserve Fund, and except to the extent that the combined balances in the General Reserve Fund and certain other debt reserve funds of the Authority (including the Special Reserve Fund, Air Terminal Reserve Fund, and Marine Terminal Reserve Fund established in connection with General and Refunding, Air Terminal and Marine Terminal Bonds, respectively, as well as the Consolidated Bond Reserve Fund) may at the time exceed the next two years' debt service on all bonds then outstanding which are secured by a pledge of the General Reserve Fund, the Authority covenants (subject to prior pledges) that General Reserve Fund moneys may not be used for any purpose if at the time there are any other moneys of the Authority available for that purpose and may not be used for the prepayment of debt service before due, and must be held in the form of cash or in obligations of (or guaranteed by) the United States.

At the present time the General Reserve Fund is pledged in support of all outstanding bonds and notes of the Authority other than State Guaranteed Commuter Car

Excerpt from Exhibit S-36

Bonds and the bank loan described hereinafter. In addition, it has been pledged in support of all Consolidated Bonds now or hereafter issued.

In connection with the pledge of the General Reserve Fund made in support of outstanding bonds and notes and the bonds of the present offering, the Authority has reserved the right to pledge the General Reserve Fund as security for any bonds, notes or other evidences of indebtedness whatsoever hereafter issued by the Authority as security for which it may at the time be authorized by law to pledge the General Reserve Fund and to use the moneys in the General Reserve Fund to fulfill any of its undertakings in connection with bonds, notes or other evidences of indebtedness secured by a pledge of such Fund, except that the Fund may not so long as any of the Bonds of the present offering are outstanding be pledged in support of bonds, other than Consolidated Bonds, to be issued in connection with an additional facility (in connection with which the Authority has not previously issued bonds secured by such pledge), unless the Authority has first certified its opinion that such pledge will not, among other things, materially impair its ability to fulfill its undertakings to the holders of Consolidated Bonds.

All bonds, notes or other evidence of indebtedness now secured by a pledge of the General Reserve Fund are secured on an equal footing and the Consolidated Bond Resolution provides that no greater rights in or to the General Reserve Fund may hereafter be granted to the holders of any such other obligations that are now granted to the holders of the bonds issued pursuant to such resolution.

The surplus revenues of all facilities of the Authority now in operation (not including cars acquired under the aforesaid New York State Commuter Railroad Car Program) are payable into the General Reserve Fund to the extent required by the statutes.

Excerpt from Exhibit S-36

The statutory amount of the General Reserve Fund, to the establishment and maintenance of which the Authority is required to apply the surplus revenues of its facilities financed and refinanced by bonds legal for investment, as defined in the statutes, is 10% of the par value of such bonds currently outstanding. As of the close of each calendar year the Authority has determined such amount and paid any surplus revenues available therefor into the Fund to the extent required to maintain it at its then statutory amount. The balance of such Fund on December 31, 1969 was $120,206,000.

Sources of Payments Into the Fund

The surplus revenues of all facilities of the Authority now in operation (not including cars acquired under the aforesaid New York State Commuter Railroad Car Program) are payable into the General Reserve Fund to the extent required by the statutes. The four classes of present facilities from which the Authority may derive surplus revenues payable into the General Reserve Fund are:

A. Those upon the net revenues of which Consolidated Bonds constitute a first lien and charge at the present time, which are

   Hoboken-Port Authority Marine Terminal
   Brooklyn-Port Authority Marine Terminal
   Erie Basin-Port Authority Marine Terminal
   Port Authority-West 30th Street Heliport
   Port Authority-Downtown Manhattan Heliport
   Elizabeth-Port Authority Marine Terminal
   Hudson Tubes
   World Trade Center (after construction)

B. Those upon the net revenues of which the aforesaid Air Terminal Bonds constitute a first lien and charge at the present time, which are

   La Guardia Airport

Excerpt from Exhibit S-36

Newark Airport
John F. Kennedy International Airport
Teterboro Airport

C. That upon the net revenues of which the aforesaid Marine Terminal Bonds constitute a first lien and charge at the present time, which is
Port Newark

D. Those upon the net revenues of which the aforesaid General and Refunding Bonds constitute a first lien and charge at the present time, which are the
Holland Tunnel
Lincoln Tunnel
George Washington Bridge
Bayonne Bridge
Goethals Bridge
Outerbridge Crossing
Port Authority Inland Terminal No. 1 (Port Authority Bldg.)
Columbia Street Marine Terminal
New York Union Motor Truck Terminal
Newark Union Motor Truck Terminal
Port Authority Bus Terminal

The Bank Loan

In December 1968, the Authority obtained a loan from banks and trust companies located in New York and New Jersey in the amount aggregating $210,000,000, with interest at 4¼% per annum, to mature in 1975, for application to the capital cost of facilities of the Authority financed or refinanced in whole or in part by Consolidated Bonds. The loan, including interest, is payable from net revenues legally available therefor in the Special Reserve Fund, Air Terminal Reserve Fund, Marine Terminal Reserve Fund and Consolidated Bond Reserve Fund as provided in the Authority's bond resolutions establishing such funds. Under

Excerpt from Exhibit S-36

the terms of the loan, annual amortization installments of up to $35,000,000 are to be paid to the extent net revenues are legally available therefor. Payment of the loan and interest thereon is subject in all respects to the payment of debt service on the Authority's General and Refunding Bonds, Air Terminal Bonds, Marine Terminal Bonds and Consolidated Bonds and Consolidated Notes, as required by the applicable provisions of the Authority's bond resolutions, and to the payment into the General Reserve Fund of the amount necessary so as to maintain such Fund at the amount specified in the General Reserve Fund statutes. Neither the loan nor the interest thereon is secured by or payable from the General Reserve Fund.

Rate Powers and Covenants

As a result of legislation contained in Chapter 47 of the Laws of New York of 1931 and Chapter 4 of the Laws of New Jersey of 1931; in Chapter 802 of the Laws of New York of 1947 and Chapter 43 of the Laws of New Jersey of 1947; and in Chapter 209 of the Laws of New York of 1962 and Chapter 8 of the Laws of New Jersey of 1962 (which authorized the World Trade Center-Hudson Tubes Project), the two States covenanted with each other and with the holders of any bonds of the Authority secured by its General Reserve Fund (including Consolidated Bonds), that the two States will not diminish or impair the power of the Authority to establish, levy, and collect tolls, rents, fares, fees, or other charges, in connection with any facility owned or operated by the Port Authority the revenues of which shall have been pledged in whole or in part as security for such bonds. All present Port Authority facilities (not including cars acquired under the aforesaid New York State Commuter Railroad Car Program) and the charges therefor are covered by these statutory covenants, so long as such bonds or other obligations remain outstanding.

Excerpt from Exhibit S-36

Under the 1962 Statutes the States also have covenanted that they will not diminish or impair the Port Authority's power to determine the quantity, quality, frequency or nature of the service provided in connection with such facility.

The Authority has covenanted with the holders of Consolidated Bonds to establish charges in connection with facilities whose net revenues are pledged as security for such bonds (all present Authority facilities not including cars acquired under the aforesaid New York State Commuter Railroad Car Program) to the end that at least sufficient net revenues may be produced therefrom to provide for the debt service on all Consolidated Bonds, but in the event that such net revenues are insufficient to provide for the debt service on Consolidated Bonds, to make good any deficiency out of the General Reserve Fund or other available revenues, moneys or funds and for that purpose to establish charges in connection with facilities the surplus revenues of which are payable into the General Reserve Fund (including all its existing bridges and tunnels, air, marine and inland terminals, the Hudson Tubes, and the World Trade Center when constructed) to the end that combined surplus revenues may be produced therefrom at least sufficient to cover debt service on Consolidated Bonds through the medium of the General Reserve Fund.

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Excerpt from Exhibit S-38

QUOTATIONS OF AUTHORITY BONDS

NEW YORK TIMES
FEBRUARY 7, 1975

		Due	Bid	Asked	Bid Chg.
Indiana Toll Road	3½%	1/1/94	74½	76½	+2½
Kansas Turnpike	3⅜%	10/1/94	74	77	+2
Mass Port	3.80%	2004	66	69	—
Mass Port	6%	2011	87	91	—
Port of N. Y.	4¾%	2003	71	74	+½
Port of N. Y.	5½%	2008	77½	80½	+½
Port of N. Y.	6%	2008	86	90	—1

Excerpt from Exhibit S-39

QUOTATIONS OF AUTHORITY BONDS

NEW YORK TIMES
FEBRUARY 8, 1975

		Due	Bid	Asked	Bid Chg.
Indiana Toll Road	3½%	1/1/94	77½	80½	+3
Kansas Turnpike	3⅜%	10/1/94	74	77	—
Mass Port	3.80%	2004	66	69	—
Mass Port	6%	2011	88	92	+1
Port of N. Y.	4¾%	2003	71½	74½	+½
Port of N. Y.	5½%	2008	77½	80½	—
Port of N. Y.	6%	2008	86	90	—

Excerpt from Exhibit S-40

PORT OF NEW YORK AUTHORITY

HEARINGS

Before

SUBCOMMITTEE No. 5

of the

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH CONGRESS

Second Session

November 29, 30, December 1 and 2, 1960

Serial No. 24

Part 1

Mr. Maletz. Mr. Tobin, at a later stage of this hearing, the sub-committee will ask you a number of questions pertaining to the port authority's activities in connection with the rail commuter problem in the New York-New Jersey area. At this point, I will inquire only as to events leading up to passage of legislation in 1959 of a New York State railroad commuter car financing program. You are familiar with that legislation, are you not?

Mr. Tobin. Yes, sir, I am quite familiar with it.

Mr. Maletz. Do you know a Robert W. Purcell?

Mr. Tobin. Very well.

• • •

Mr. Maletz. In 1959, was he adviser to Governor Rockefeller of New York on the New York commuter rail problem?

Excerpt from Exhibit S-40

Mr. Tobin. He was. The latter part of 1958 and the early part of 1959—and then he resigned.

• • •

Mr. Maletz. Did Mr. Purcell, after extensive study, propose a plan or suggest initially a plan whereby the port authority would purchase commuter railroad equipment and lease the same to the Long Island Railroad and the New York Central Railroad for 25 years at a rental which would reimburse the port authority for its total cost, including carrying charges, over the terms of the lease?

Mr. Tobin. He did. And that plan was enacted into law in both States, and I helped him work it out.

Mr. Maletz. Let me ask you this next question. Listen very carefully. Was it part of Mr. Purcell's original proposal that the port authority should finance this railroad commuter car program?

Mr. Tobin. We discussed that.

Mr. Maletz. Would you answer the question?

Mr. Tobin. Yes, I am answering it. We discussed that.

Mr. Maletz. Was it part of Mr. Purcell's original proposal that the port authority should finance this railroad commuter car program?

Mr. Tobin. No, it was not.

Mr. Maletz. It was not?

Mr. Tobin. It was not, in the sense that Mr. Purcell and I discussed that possibility. We discussed it for weeks. And he was exploring the possibilities of that, and I was giving him the reasons why, as a matter of the pledging of the general reserve fund, that was not legally or financially possible.

Mr. Maletz. Is it your testimony, under oath—

Mr. Tobin. Oh, come, come. I am an officer of the State of New York. Do not give me that. I am here and I will

testify to any facts you want. But do not give me that stuff of, is it under oath. I am testifying under oath. I am a lawyer and an officer of the State of New York, and I am very clear about it. And do not tell me I am testifying under oath.

The Chairman. Mr. Marshall, will you see that order is maintained here? And please do not make any such outbursts, Mr. Tobin.

Mr. Tobin. Then ask your counsel not to throw that kind of gratuitous slur at me. I am not here to take it.

The Chairman. If you—

Mr. Tobin. And I do not intend to.

The Chairman. If you object to a question, you have counsel. He can object. And then the Chair will pass upon it. The Chair will pass upon it.

Mr. Tobin. Then let us drop this police court stuff of you realize you are testifying under oath.

The Chairman. Are you now making any charges against this committee?

Mr. Tobin. Yes, I am objecting very much to that crack. I do not like it. I am not accustomed to it.

The Chairman. Then your counsel is here to protect your interests and your rights. Now, Mr. Maletz.

Mr. Maletz. Mr. Chairman—

Mr. Tobin, did Mr. Purcell propose initially that the port authority should finance this railroad car commuter program?

Mr. Tobin. Mr. Purcell asked me to discuss that with him.

Mr. Maletz. Did he propose it?

Mr. Tobin. And I did.

Mr. Maletz. Did he propose such a plan?

Mr. Tobin. I am answering it my own way. He asked me to discuss that with him, and he asked me questions.

We explored the possibility of whether or not such a plan was possible. But we never reached any point, as your question indicates, where he submitted a proposal to me that we do that.

Mr. Maletz. Did he suggest at any time in February or March of this year that the port authority should finance the railroad commuter car program?

Mr. Tobin. I say we discussed that, and he told me he wanted to discuss that. And we did.

Mr. Maletz. Did he ever make that suggestion?

Mr. Tobin. Well, I am saying, I think, Mr. Maletz, that we are saying about the same thing. I think there were discussions. He asked me to meet him. We sat down, and he said: "I would like to explore with you the possibilities of pledging the port authority general reserve funds to purchase the railroad equipment."

And I explained the reason for him, and had a long exchange of correspondence with him, over the weeks and weeks as to why that was legally and financial impossible. And a matter which he then completely accepted, and stated with the greatest strength, in his report.

The Chairman. In other words, at the beginning, at least, he made that proposal, and you objected to it?

Mr. Tobin. Yes, Mr. Chairman.

Mr. Maletz. Was it estimated that under Mr. Purcell's original suggestion, about $200 million of railroad commuter cars, could be purchased?

Mr. Tobin. The figure escapes me. It was a large figure, Mr. Maletz. I can verify that.

Mr. Maletz. Would it be about $200 million?

Mr. Tobin. It seems high to me, because what we have been working on under the statute over the past year and a half has been a project involving the purchase of $40

million in cars. We may have gotten up into the astronomy of $200 million. But I am not clear on it.

Mr. Maletz. Was it Mr. Purcell's reaction that such a program, under port authority financing, could provide new cars for commuters in the New York area sometime during 1960?

Mr. Tobin. We were talking in the beginning of 1959. And I thing we both believed and hoped that we could work out a program together, and we finally did—that we would begin to supply cars in 1960. I think we both—that is a narrative recollection upon my part. But I would assume that was our timing.

Mr. Maletz. Mr. Tobin, I take it that you, as an officer of the port authority, were greatly exercised over Mr. Purcell's suggestion to require the port authority to finance the railroad commuter program.

Mr. Tobin. Well, it was financially and legally impossible. And I was greatly concerned that he, with the respect I had for him, and he was speaking for the Governor's office, should think that the general reserve fund could be pledged for that purpose, with all the perfectly terrible credit and financial consequences of such a matter. And I was very much concerned about it.

Mr. Maletz. I take it that you, speaking for the port authority, took the position that such a proposal would terribly impair the port authority's credit?

Mr. Tobin. Oh, yes. And I took that position not only with Mr. Purcell, but with the Governor himself, and with all of us concerned about it. There were great conversations. Our board was in them. And in the discussions. And we discussed it with the investment bankers, down in the street. And it was quite—there were weeks of very earnest and serious discussions, which resulted in the final

plan worked out, in Mr. Purcell's report, in which he came to recognize that the general reserve fund could not possibly be pledged for such purpose without destroying the port authority's credit.

And you will find that his report, be it February or March of 1959, expressly says that.

Mr. Maletz. You mean the report of March 16?

Mr. Tobin. Bob Purcell's final report.

Mr. Maletz. I see. Now, did you—

Mr. Tobin. Which was the report that recommended the legislation that was enacted.

Mr. Maletz. We are going to go through all these steps in a moment, Mr. Tobin.

Did you in the latter part of February 1959 ask various of the principal investment bankers who handled port authority bonds to attend a meeting at the First National City Bank the following day, March 1?

Mr. Tobin. I met with all the investment bankers. I met with what we would call the syndicate heads, and with our banking advisers, who are the National City Bank, and discussed this problem.

Now, in the normal course, that is the type of meeting that I would call. And I could go back through our files, and if you have files from the National City Bank that shows that that is the time of that meeing, then undoubtedly it is—that would be an accurate report.

Mr. Maletz. Did you call the meeting?

Mr. Tobin. I would assume that I probably asked the National City Bank to call the meeting, which would be the normal way to proceed. I would ask Mr. Pfeffer, the vice president of government and municipal securities at the National City Bank, who is in a personalized sense our general banking consultant and adviser—I would ask him to call such a meeting.

Excerpt from Exhibit S-40

Mr. Maletz. At this particular meeting, were representatives, if you recall, of the investment banking firms of Harriman Ripley; Halsey, Stuart; Blyth & Co.; Glore, Forgan, & Drexel present.

Mr. Tobin. Those would be the syndicate leaders. I am not saying I remember that—though if the National City Bank memo that you have says that is who was there, that is in the normal course. I can add that is about who would be there.

Mr. Maletz. And I take it these investment banking concerns are the principal underwriters of port authority bond issues.

Mr. Tobin. Usually a syndicate—with the sizes of our issues, it splits into two syndicates. Generally, as you had typically in the one last week, Halsey, Stuart is the head of one syndicate, and Whitely, Howard are the other—and Forgan and Harriman, Ripley are parts of one syndicate or another.

Mr. Maletz. I see. At this meeting, did you appeal to these investment bankers for help in blocking the Purcell plan to the extent that it called for port authority financing of a railroad commuter car program?

Mr. Tobin. At that meeting I outlined to them what Purcell and I were discussing, and its concerns and dangers, and it would be perfectly apparent to them. And, of course, they had taken the responsibilities for selling millions of dollars of port authority bonds to their investors. And on any matter such as this that would—if it ever should eventuate—would seriously threaten the invesments of those they had sold bonds to, as responsible bankers, and having in mind their fiduciary capacity, that was a matter in which they would have the same moral concern that I would.

Excerpt from Exhibit S-40

Mr. Maletz. Let me repeat the question. At this meeting, did you appeal to these investment bankers for help in blocking the Purcell proposal to the extent that it called for port authority financing of a railroad commuter car program?

Mr. Tobin. I object to your words, and I will not answer that question with the words in it "appeal" and "blocking." They are colored words.

Mr. Maletz. Are they colored, Mr. Tobin?

Mr. Tobin. They——

Mr. Maletz. Are they colored?

Mr. Holtzman. What is colored about the word "appeal," Mr. Tobin?

Mr. Goldstein. Excuse me, Mr. Holtzman.

Mr. Holtzman. Just a minute. What is colored about the word "appeal"?

Mr. Tobin. Well, I would rather discuss the matter in my own way. I went down there, and I outlined this situation to them, and I said here is a serious situation. And they agreed with me. I urged that in their interests, and in the interests of their investors, they stand with me in saying what would happen if the port authority ever attempted to pledge its general reserve for a commuter rapid transit cars in that context of 1959.

Mr. Maletz. Mr. Tobin, do you recall you yourself using the word "appeal"?

Mr. Tobin. No, I do not.

Mr. Maletz. I show you a letter dated March 17, 1959, from you to Mr. Joseph P. Ripley, of Harriman Ripley.

Mr. Tobin (reading):

Dear Joe.

Mr. Maletz. You can read it to yourself, and then we will read it later.

Excerpt from Exhibit S-40

Mr. Tobin (reading):

In the light of our discussion in your office on March 5 about commuter rapid transit and the port authority, I thought you would like to have the full transcript of our newspaper release.

In the course of my discussions with Governor Rockefeller and Mr. Purcell subsequent to March 5th the proposal for port authority participation on the basis of what was called "equipment trust financing" or, for that matter, suggestions for any financial assistance by the port authority in the field of commuter rapid transit was dropped. We were then able to come to this combination of State advances and bonds guaranteed by the State with the port authority simply carrying out the administrative and managerial work of the State's participation.

Thank you very much again for your letter of March 5. We were, as you know, shocked by Blyth & Co.'s refusal in this crisis to stand by the customers to whom they had sold port authority——

The Chairman. What did you say about Blyth & Co.?

Mr. Tobin (reading):

We were, as you know, shocked by Blyth & Co.'s refusal in this crisis to stand by the customers to whom they had sold port authority securities throughout the years. On the other hand, the commissioners were absolutely certain that such an attitude would be at the ends of the earth from your sense of investment responsibility. And this prompted our immediate and direct appeal for your help—which, as on so many other occasions throughout the creation and development of the authority, was immediately forthcoming.

Sincerely,

Austin J. Tobin.

Excerpt from Exhibit S-40

Mr. Maletz. Would you read that last sentence again, Mr. Tobin.

Mr. Tobin. Yes. [Reading:]

Thank you very much again for your letter of March 5. We were, as you know, shocked by Blyth & Co.'s refusal in this crisis to stand by the customers to whom they had sold port authority securities throughout the years.

Mr. Maletz. I said the last sentence.

Mr. Tobin (reading):

On the other hand, the commissioners were absolutely certain that such an attitude would be at the ends of the earth from your sense of investment responsibility. And this prompted our immediate and direct appeal for your help—which, as on so many other occasions throughout the creation and development of the authority, was immediately forthcoming.

• • •

Mr. Maletz. So you used the word "appeal," did you not?

Mr. Tobin. Yes, I did.

Mr. Maletz. At this meeting of March 1, did you appeal to the investment bankers for help in blocking the Purcell plan to the extent that it called for port authority financing of a railroad commuter car program?

Mr. Tobin. We appealed to them to bring to the attention of Mr. Purcell and the Governor, which they did, the consequences of any such ill-advised financing as that.

Mr. Holtzman. Just one question at that point.

In your previous response, you indicated that the futility of this kind of program would be "apparent" to these investment people at this National City meeting. Nevertheless, and in spite of that, you felt it necessary to appeal to them to block this plan. Is that a fair statement, Mr. Tobin?

Excerpt from Exhibit S-40

Mr. Tobin. I felt—I certainly conscientiously was obliged to call to their attention what was happening, and to urge that they advise all men in the financial field for whom both the Governor and Mr. Purcell would have the utmost respect and confidence, to acquaint Mr. Purcell with the very grievous consequences of any such proposal as that.

Mr. Maletz. Mr. Chairman, did you, sir, at this meeting of March 1, submit a suggested letter for the investment bankers to sign, disapproving the Purcell plan on the ground that it would impair the credit of the port authority?

Mr. Tobin. I do not remember submitting such a letter. As I recall it, they all wrote their own letters.

Mr. Maletz. Did you submit a suggested letter?

Mr. Tobin. I do not remember.

Mr. Maletz. You do not recall.

At this meeting, did Harriman Ripley; Halsey, Stuart; Glore, Forgan, and Drexel agree to send a letter, such as you had suggested, disapproving the Purcell plan for port authority financing of a railroad commuter car program?

Mr. Tobin. My only—Mr. Maletz, so that you and I do not get into another eruption—my only point is that I do not remember a particular meeting. I have said that. I have not any doubt there was such a meeting. I had innumerable meetings with the investment bankers during that period.

So that such meetings as you describe were held, and would be held again in similar circumstances. But I am only saying—you asked me was there this meeting on March 1 or whatever it was. And I do not remember that. And if you had told me before I came down that you wanted to discuss this, I would have had all the dates and the times and the people. But you apparently did not

Excerpt from Exhibit S-40

want me to know that you were going to discuss this before we came down.

The Chairman. Wait a minute, Mr. Tobin. We apprised you of what we were going into. We could not go into all the details. That would be impossible.

Now, proceed with the questioning, Mr. Maletz.

Mr. Maletz. Now I take it that these investment banking concerns responded to your appeal by sending letters disapproving the Purcell plan on the ground that it would materially impair the port authority credit: is that correct?

Mr. Tobin. All except Blyth & Co.

Mr. Maletz. You remember Blyth & Co. refused; is that right?

Mr. Tobin. I remember that very well.

Mr. Maletz. Now I take it that these banking concerns have made a rather considerable profit over the years in underwriting port authority bond issues.

Mr. Tobin. No. They always complained that they get badly hooked on a port authority issue. As a matter of fact they are right now. We sold $25 million last Monday, and it is stuck, and they only sold $2 million of it. However, they are in business, and they are in business to make money, and I assume that they make enough on it so that they will bid on the next issue, as they bid on the one last Monday.

Mr. Maletz. Is it not true on June 17, 1959, a syndicate led by Halsey, Stuart; Glore, Forgan, and Drexel, were successful bidders for a $30 million port authority consolidated bond issue?

Mr. Goldstein. Are you reading again from a record?

Mr. Maletz. Do you recall that?

Mr. Tobin. In or about that period, yes. What I would recall the Halsey, Stuart syndicate, were the successful bidders on an issue of port authority bonds.

Excerpt from Exhibit S-40

Mr. Holtzman. On that point. This was in spite of their complaints about losing money on these transactions?

Mr. Tobin. These are market complaints. If we went down to the street again, you would hear, "Oh, my God, we are hooked on another port authority issue." And you and I both know they are still in business, and they will be back there bidding on the next port authority issue.

Mr. Maletz. Without revealing specific figures, are you familiar with the fact that this syndicate made a very substantial profit indeed on their June 17, 1959, bid?

Mr. Tobin. I do not know. It was a public bid that they submitted and we accepted. It is really—we never get the figures on what they do, or do not.

Mr. Maletz. You would assume they do make a profit?

Mr. Tobin. I certainly would.

Mr. Maletz. On the port authority securities.

Mr. Tobin. Or any securities—State of New York securities, city of New York securities, U.S. Government securities, or they couldn't stay in business.

Mr. Maletz. Yes, we understand that.

Mr. Tobin. You seem to be making a point of it.

Mr. Maletz. Well, these are the bankers that you appealed to for help, Mr. Tobin?

Mr. Tobin. I appealed to all of them for help—the investment market.

Mr. Maletz. Now, Blyth & Co. is one of your principal investment underwriters, is it not?

Mr. Tobin. Yes, it is.

Mr. Maletz. Is it or is it not a fact that at this meeting of March 1, at the First National City Bank, the representatives of Blyth & Co. advised you that they would not sign the suggested letter that you had sent disapproving the Purcell plan?

Excerpt from Exhibit S-40

Mr. Tobin. I do not remember whether it was at that meeting. I do not remember at this stage, subject to checking my files, that I prepared a suggested letter. I do remember at some stage in or about that time, Blyth & Co. said they would not submit such a letter, and I told them in unvarnished language what I thought of their sense of moral responsibilities to the people they had sold port authority bonds to.

Mr. Maletz. Now, Mr. Eugene——

Mr. Tobin. An opinion I still carry with respect to the particular individual in Blyth & Co. who made that decision.

Mr. Maletz. I see. And I take it that would be Mr. Mr. Reginald M. Schmidt?

Mr. Tobin. It certainly would.

Mr. Maletz. The vice president?

Mr. Tobin. Yes.

Mr. Maletz. Who was then head of the municipal financing department of Blyth?

Mr. Tobin. Yes. Since retired.

Mr. Maletz. Mr. Eugene Mintkeski, treasurer of the port authority, was formerly associated with Blyth & Co.

Mr. Tobin. Yes, we got him 12 or 15 years ago.

Mr. Maletz. As you previously testified, Mr. Schmidt was in March 1959 a vice president of Blyth & Co., and head of its municipal finance department.

Mr. Tobin. What is the date there?

Mr. Maletz. About March 1959.

Mr. Tobin. Yes, he was.

Mr. Maletz. Did you ask Mr. Mintkeski to call Reginald M. Schmidt at home or at any time to urge him to sign a letter disapproving the Purcell plan to the extent that it called for port authority financing?

Mr. Tobin. I have a recollection of asking Gene to call Reginald Schmidt about what I felt was the shocking conduct that he was recommending.

Excerpt from Exhibit S-40

Mr. Maletz. The shocking conduct was that he would not sign the letter that you had suggested disapproving——

Mr. Tobin. I do not remember—but some letter, such as all the other investment bankers were signing.

The Chairman. What other letter could it be?

Mr. Tobin. They all signed different letters. I have the letters. They were submitted to the Governor. They are published in our reports on rapid transit, in the investigations by the New Jersey Senate and Assembly—senate or assembly.

Mr. Maletz. Now, do you know whether Mr. Mintkeski called Mr. Schmidt?

Mr. Tobin. I do not remember. But if you had told me you wanted to get into this subject, I would have gone into all of this—the record of these.

Mr. Maletz. Do you remember that now?

Mr. Tobin. I remember that it was a negative response that he got.

Mr. Maletz. Did Mr. Mintkeski, according to your present recollection, report to you as to the nature of the conversations with Mr. Schmidt?

Mr. Tobin. I do not remember as I sit here. He most certainly did.

Mr. Maletz. Well, I take it——

Mr. Tobin. Whatever it was, he reported it to me.

Mr. Maletz. I take it Mr. Mintkeski, Mr. Chairman, is in this room. May I suggest——

The Chairman. Yes. Is Mr. Mintkeski here?

Mr. Mintkeski. Yes.

The Chairman. Would you step forward, Mr. Mintkeski, please.

Do you solemnly swear the testimony you will give is the truth, the whole truth, and nothing but the truth, so help you God?

Excerpt from Exhibit S-40

Mr. Mintkeski. I do. May I stand so I can hear you better and you can hear me better?

TESTIMONY OF EUGENE A. MINTKESKI, DEPUTY DIRECTOR OF FINANCE AND TREASURER, PORT OF NEW YORK AUTHORITY

Mr. Maletz. Would you state for the record your name and address?

Mr. Mintkeski. Eugene Mintkeski, 100 Rocky Wood Road, Manhasset, Long Island.

Mr. Maletz. Are you an officer of the port of New York?

Mr. Mintkeski. Yes, deputy director of finance and treasurer.

Mr. Maletz. How long have you been with the port authority?

Mr. Mintkeski. Since April 1948.

Mr. Maletz. And you previously have been associated with Blyth & Co?

Mr. Mintkeski. The previous 12 years.

Mr. Maletz. I see. Mr. Mintkeski, do you recall telephoning Mr. Reginald Schmidt of Blyth & Co. on the evening of March 1, 1959, and telling him that you were very much disturbed over the fact that Blyth & Co., would not sign a letter disapproving the Purcell plan?

Mr. Mintkeski. I may have, but I don't remember, sir, and I wouldn't tell him that; no, sir.

The Chairman. You have no recollection whatsoever of telephoning Mr. Schmidt?

Mr. Mintkeski. Not on that particular point, Mr. Chairman.

Mr. Maletz. All right, sir.

Mr. Holtzman. Do you remember any conversation with Mr. Tobin relative to this point—Mr. Schmidt, rather?

Mr. Mintkeski. Yes; I may have talked to Mr. Schmidt about this. After all, Mr. Schmidt was my former boss. I was very friendly with him.

Excerpt from Exhibit S-40

Mr. Maletz. Do you remember now calling him?

Mr. Mintkeski. No; I don't—not on this point.

The Chairman. Do you remember having a conversation with him, where you discussed this Purcell plan and asked him to write this disapproving letter?

Mr. Mintkeski. No; I have never asked him to do that at all, sir. He wasn't even at the meeting to which you refer.

Mr. Maletz. I have no further questions of you, Mr. Mintkeski, at this moment.

Mr. Tobin, on March 2 or thereabouts, did you send a 10-page letter to Mr. Purcell, expressing opposition to his plan for port authority railroad commuter financing?

Mr. Tobin. May I have the letter that you are talking about, please?

Mr. Maletz. Certainly. I would first ask you whether you recall sending him a letter.

Mr. Tobin. I sent him a number of letters. He sent me a number of letters.

The Chairman. This is for identification only?

Mr. Maletz. For identification only.

Do you recall that letter now, Mr. Tobin?

Mr. Tobin. Yes; I do.

Mr. Maletz. I see. May we have it back?

Do you recall, Mr. Tobin, that on March 3 or thereabouts, you and Mr. Howard Cullman went over to see Joseph Ripley, chairman of the board of Harriman Ripley, for the purpose of getting him to intercede with Mr. Reginald Schmidt of Blyth & Co., and have him write a letter disapproving the Purcell plan?

Mr. Tobin. I remember that—I don't remember that the date was March 3, but somewhere in around there—Mr. Howard Cullman and I went to see Mr. Joseph Ripley for the purposes you have indicated.

Mr. Maletz. Having him intercede with Mr. Schmidt?

Excerpt from Exhibit S-40

Mr. Tobin. Yes.

Mr. Maletz. Who is Howard Cullman?

Mr. Tobin. Howard Cullman has been a commissioner of the Port of New York Authority for 33 years. He was formerly its vice chairman for 10 years, and then its chairman for 10 years. He is now its honorary chairman.

Mr. Maletz. Why did you have Mr. Cullman go with you to visit Mr. Ripley?

Mr. Tobin. Why not?

Mr. Maletz. I am asking you why.

Mr. Tobin. Mr. Cullman is the chairman—was the chairman of the port authority.

Mr. Maletz. Was he the chairman at that time, in 1959?

Mr. Tobin. I don't——

The Chairman. Who was chairman in 1959?

Mr. Tobin. No. He was not chairman at that time. He was the honorary chairman at that time.

Mr. Maletz. Why did you get him to go with you?

Mr. Tobin. Mr. Howard Cullman goes with me on all sorts of port authority business, and has for the last 30 years. Why did you and the chairman go to see somebody on some proper purpose of this committee?

The Chairman. He was honorary chairman——

Mr. Tobin. But he is a commissioner, he is a full commissioner of the port authority.

The Chairman. At the present time, too? Was he full commissioner at that time?

Mr. Tobin. Yes. He still is.

The Chairman. And the chairman was some other person?

Mr. Tobin. The chairman at that time, my best recollection of it, was Mr. Donald Lowe, of New Jersey.

Mr. Maletz. Did Mr. Ripley tell you, and Mr. Cullman——

Excerpt from Exhibit S-40

Mr. Tobin. Mr. Chairman, that is the confusing thing. When you say honorary chairman, you assume a retirement. This was not so in this case at all. Howard Cullman was then, and is right today, a very active commissioner of the port authority. Well, you recall that. You have subpenaed him here.

The Chairman. What is that?

Mr. Tobin. You will recall that. You have subpenaed him here.

Mr. Maletz. Did Mr. Ripley tell you and Mr. Cullman that he would do all he could to get Blyth & Co. to go along with the port authority in disapproving the Purcell plan?

Mr. Tobin. That is my best recollection, that he did.

Mr. Maletz. To your knowledge, did Mr. Ripley, for that purpose, have lunch with Mr. Schmidt on that date to discuss his sending a letter disapproving the Purcell plan?

Mr. Tobin. I don't know.

Mr. Maletz. Do you recall on or about March 3, Mr. Tobin, that Mr. Schmidt of Blyth & Co. called you on the telephone?

Mr. Tobin. No; I don't remember the date. In that time Mr. Reginald Schmidt and I had some very brimstone conversations over the telephone.

Mr. Maletz. Some very heated conversations?

Mr. Tobin. Oh, yes.

Mr. Maletz. Did you, in the course of any conversation with Mr. Schmidt, demand that Blyth & Co. write a letter disapproving the Purcell plan?

Mr. Tobin. I have no recollection of that. I certainly was urging him to do so, and I was certainly expressing the most shocked views of his refusal to do so.

Mr. Maletz. Mr. Chairman, at this point I would read a memorandum dated March 4, 1959, prepared by Mr. R. M. Schmidt, who has been identified as vice president of Blyth & Co., and head of its municipal finance department.

Excerpt from Exhibit S-40

On Wednesday—

This is dated March 4, 1959—

On Wednesday, February 25, George Leib called me into his office and asked me to take a call from Mr. Robert W. Purcell. George advised me that Mr. Purcell is on the committee appointed by the Governor to study the railroad commuter and rapid transit problem in New York City.

Mr. Purcell stated that he was working on a plan that he thought would be constructive and wanted my opinion and reaction to it. In brief, it provided for the Port of New York Authority to finance the Long Island Rail Road and New York Central in purchasing all passenger equipment and take therefor their equipment bonds or notes. He thought that the port could do 100-percent financing and extend the payout for 20 to 25 years.

He also stated he read the letter which I had written to the port authority on July 16, 1958, in connection with the New Jersey legislative committee hearing on the subject but he thought that the approach he now suggested possibly eliminated some of the objections I had expressed in that letter. I told him I did not think I could give a quick answer to him as to the feasibility of his idea but it did seem to apear to be ingenious and something worthwhile exploring. We had further discussion regarding the security of the leases as desirable investment for the Port of New York Authority upon which to issue their own bonds.

Also, I stated I did not know whether or not they had the legal authority under the indenture but we agreed there was no point of discussing any further the legal aspects and also there was much room for exploration as to the quality and character of the security offered.

The next we heard about this conversation was that the authority on Friday, February 27, called our office and asked us to meet with them at the First National City Bank on Monday, Marc[illegible]. George LeVind and Fred Miller attended that meeting. Also, the managers of the syndicates

Excerpt from Exhibit S-40

that usually bid for their bonds at public sale: namely, Harriman Ripley & Co.—our joint account partners—and Halsey, Stuart; Glore, Forgan, and Drexel who are joint managers of the competing syndicate. They presented a strong story disapproving the plan and the adverse effect on their credit and market for their bonds; also submitted a suggested letter for the managers to sign. LeVind, Miller, and Hawes discussed their request and also talked with me at home. We all agreed not to sign the letter or send any letter.

Following this, Gene Mintkeski—Port of New York Authority—called me at home and talked with me for about 15 minutes. He apparently was very much disturbed over the fact that we would not sign such a letter and that I had told Mr. Purcell I thought his idea was ingenious, worth studying and exploring. I stated that at no time did I give approval or disapproval to Mr. Purcell's idea. We felt very strongly that we should have in greater detail Mr. Purcell's plan and at least give him an equal chance to present an answer to the position that the Port of New York Authority is taking.

On Tuesday, March 3, at 1 p.m., Joe Ripley of Harriman Ripley telephoned and asked me to go over there for lunch to discuss this Port of New York Authority problem. He had with him Elwood Smith, Stu Silloway and Berry. He stated the luncheon was prompted by Mr. Cullman coming to see him and considerably upset because he had heard that I had given approval to Mr. Purcell's plan and wanted to know whether or not I had.

The foregoing memorandum answers that. I told him specifically I had not given my approval but in response to a call to us I gave Mr. Purcell the courteous consideration that he was entitled to and reviewed the whole story as written above. They had no criticism of my action. In fact, Joe Ripley thought he would have acted in the same manner I had if he had had a call from a representative of Governor Rockefeller.

I reported all this to Messrs. Hawes and Miller and also in compliance with the request from Mr. Cullman

Excerpt from Exhibit S-40

(which was arranged by Mr. Ripley). I then called Austin Tobin. The conversation was very unpleasant. He, in fact, requested—if not demanded—that we write a letter disapproving the Purcell plan, which I told him we would not do and I took exception that they quoted me out of context in their letter of March 2, which he denied. The conversation was very acrimonious and I would say that Mr. Tobin was rude, officious and impertinent and I ended by telling him so.

R. M. SCHMIDT.

Then at the bottom:

I advised Purcell that the Port of New York Authority in their letter of March 2 quoted me out of context and without my permission.

Now, does this refresh your recollection, Mr. Tobin, of these events?

• • •

Mr. Tobin. Yes.

Mr. Maletz. Would you say that Mr. Schmidt reported accurately on his telephone conversation with you?

Mr. Holtzman. Except, of course, with respect to the characterization of the witness.

Mr. Tobin. I think from his standpoint he was entitled to use that characterization. I was very strong in what I said to him. I talked to him about his moral and ethical responsibility to the people to whom he had sold bonds. I told him it was a hell of a thing for an investment banker to sell a client a bond and then walk out on him. And I—also he had said to me, which outraged me, that he was taking this position because he thought that Blyth & Co. ought not to get off on the wrong foot with the new administration. And I told him that was a lousy reason. So he was entitled to his characterization of what I said.

Excerpt from Exhibit S-40

The Chairman. Couldn't your attitude have been a hell of a thing to the commuters and the general public, too, conceivably?

Mr. Tobin. No, we are doing everything in our power, as was Mr. Purcell, and the State, for the commuters and the general public. I don't agree with that at all, Mr. Chairman.

Mr. Maletz. Mr. Chairman, at this point I would read another memo, from Harriman Ripley, dated March 5, 1959. This is a note to Mr. Ripley, signed "W.W."

Mr. Howard Cullman's secretary just telephoned the following message for you from Mr. Cullman:

"Governor Rockefeller was informed that issuing equipment trust to the railroads would not hurt port authority credit, and that all the investment bankers were unanimous that that was so. And, therefore, Mr. Cullman feels it is very important that Mr. Ripley send him the letter he requested."

I told her that the letter had been done in draft form yesterday afternoon but that you had to leave the office before it was completed, and that I felt sure the letter could be delivered to Mr. Cullman by hand today.

"We can send it to 161 Front Street," she said.

One further memorandum at this point, Mr. Chairman.

A memorandum from the files of Mr. Joseph P. Ripley, re New York Port Authority.

This is just to make a record of the fact that Howard Cullman and Austin Tobin came to see us at 12:30 today. Then we got Reg Schmidt to come over for lunch with S.F.S., E.D.S., H.J.B., and the writer.

Along about 3:45 p.m. Schmidt telephoned me to say that he had telephoned Tobin and that the conversation had ended up in a rather heated exchange of different views.

Excerpt from Exhibit S-40

Also, Schmidt says that Blyth are not going to write any letter on this subject.

Mr. Tobin, do you known Dwight Palmer?

• • •

Mr. Goldstein. Excuse me, if you are going to ask Mr. Tobin some questions with respect to those memos—I just merely wanted him to have copies.

Mr. Maletz. I think he has already been interrogated on this very point.

Mr. Tobin, do you know Dwight Palmer?

Mr Tobin. Very well.

Mr. Maletz. What is his title?

Mr. Tobin. He is the State highway commissioner of New Jersey, and in that department now he has also the division of rail transportation.

Mr. Maletz. Did you, on or about March 4, 1959, have an extensive conversation with Commissioner Palmer concerning the Purcell plan?

Mr. Tobin. Well, I don't know again about dates. I am in constant contact with Commissioner Palmer. Very few days go by that we are not in telephone communications with each other on a myriad of transportation problems in this area. In addition to that, Commissioner Palmer is Governor Meyner's designee as liaison with the port authority, and I am entitled to talk to Commissioner Palmer and keep him advised and understand that I am advising the Governor. He communicates rapidly with the Governor. We will have many conversations in which I tell him I think that the Governor's office ought to be advised of so-and-so, and he will either say he will take care of it, or he will call me back and say that the Governor says he agrees or he doesn't agree. And he frequently will call me and say that the Governor says so-and-so. So he occupies a position in the administrative affairs of New Jersey, and in

Excerpt from Exhibit S-40

its relationship with its agency, that is one in which—I am in daily contact with Commissioner Palmer, and certainly it would be my duty to keep Commissioner Palmer advised as to everything that was going on in the Purcell conversations.

And I take it for granted that I did. If I didn't, it would be a grievous fault.

Mr. Maletz: Do you recall a conversation on or about March 4, 1959—

Mr. Tobin. Of course not. You would have to refresh—

Mr. Maletz. Let me finish, please.

Do you recall a conversation on or about March 4, with Commissioner Palmer, in the course of which Commissioner Palmer advised you that Mr. Purcell and Governor Rockefeller considered commuter railroad financing to be the port authority's direct responsibility? Do you recall any such conversation?

Mr. Tobin. No; I don't recall that conversation.

Mr. Maletz. All right.

Mr. Tobin. There was always, in my conversations with Purcell and there are always questions of what is and is not the port authority's responsibility in the field of commuter rapid transit. That is a running discussion and debate in the press, and in official circles, in the boardroom of the port authority, and the Governors' offices, and with Mr. Purcell and Mr.—Commissioner Palmer and with Commissioner Wiprud of New York Commission. As a matter of fact, we were up at the Governor's office this last week discussing exactly this field.

The Chairman. I know you have lots of conversations with them.

Specifically did Commissioner Dwight Palmer of New Jersey tell you in the course of any conversation that Mr. Purcell said that both he and Governor Rockefeller con-

Excerpt from Exhibit S-40

sidered commuter railroad financing to be the port authority's direct responsibility?

Mr. Tobin. Well, that was—well, the word "direct," Mr. Chairman, without quarreling with it—but there were these conversations in which the Governor and Mr. Purcell were saying the port authority has a responsibility in this matter. And they knew I was advising Dwight Palmer, and he advising me back and forth as to what the progress of these conversations were.

Mr. Maletz. Do you recall, Mr. Tobin, writing a confidential memorandum to the file, dated March 5, 1959, entitled "Commuter Railroad Discussions, Proposal of Robert W. Purcell for Equipment Trust Financing"?

Mr. Tobin. No; I don't recall it. You would have to show me the memorandum.

Mr. Maletz. I will show you the memorandum, just for identification.

Mr. Goldstein. Mr. Maletz, this appears to be a memorandum of Mr. Tobin's. May I ask how you obtained that?

Mr. Maletz. Mr. Chairman, the counsel for the port authority has just raised a question.

Mr. Goldstein. I asked that, Mr. Maletz, for the reason that Mr. Tobin would have an ethical problem about discussing conversations with the Governor.

The Chairman. He would have what? Repeat that.

Mr. Goldstein. Ethical problem.

Mr. Maletz. Mr. Chairman, this is not a conversation with the Governor.

The Chairman: This is a conversation with Commissioner Palmer of New Jersey.

Mr. Goldstein. Well, he is the Govenor's representative.

Mr. Holtzman. He is not the Governor, though, is he?

Mr. Goldstein. No, sir.

Excerpt from Exhibit S-40

Mr. Maletz. Mr. Chairman, I might say this, if I may. This memorandum was obtained from a source which I personally do not think should be stated.

The Chairman. Do you identify the memorandum?

Mr. Tobin. Not yet. My files are loaded with thousands of memorandums, and I must read this. I don't refer to them again. This is some memorandum I may have written March 5, 1959, which I have not seen since.

The Chairman. All right, you may read it.

While Mr. Tobin is reading this letter, Mr. Mintkeski, will you come back to the stand, please?

Mr. Mintkeski. Yes, sir.

Mr. Maletz. Mr. Mintkeski, did you hear the memorandum I had read, prepared by Mr. Reginald M. Schmidt?

Mr. Mintkeski. About my conversation with him?

Mr. Maletz. Yes.

Mr. Mintkeski. Yes, sir.

Mr. Maletz. Does that refresh your recollection?

Mr. Mintkeski. No; I don't remember having a conversation with Mr. Schmidt about that particular problem.

The Chairman. Would you say that Mr. Schmidt is not telling the truth when he makes this statement?

Mr. Mintkeski. Oh, no; I have every confidence he is stating the truth, sir.

The Chairman. Then you believe what he says is true?

Mr. Mintkeski. I may have had a conversation with him, Mr. Chairman, but I don't recall it.

The Chairman. All right.

Have you identified the document now, Mr. Tobin?

Mr. Tobin. No; Mr. Chairman. This is a three-page memorandum full of all sorts of things, and I want to consider it.

The Chairman. I am going to order counsel to state where he got that memorandum from.

Excerpt from Exhibit S-40

Mr. Maletz. Mr. Chairman, the memorandum was obtained from the files of Blyth & Co., which turned over various documents concerning its relationship with the port authority in reponse to the subcommittee's request therefor. I believe, Mr. Chairman, too, that a subpena calling for production of such documents was served on Blyth & Co.

The Chairman. I just asked you to identify it, Mr. Tobin. Have you been able to identify it?

Mr. Tobin. I have only got about a half page to go, Mr. Chairman, and then I will.

Mr. Maletz. Do you recall the memorandum now, Mr. Tobin?

Mr. Tobin. Yes; I do; very well.

Mr. Maletz. You wrote the memorandum?

Mr. Tobin. I did.

Mr. Maletz. I see.

Mr. Chairman, with your permission, I would read this memo.

Would you prefer to read it, Mr. Tobin?

Mr. Tobin. No.

The Chairman. You read it.

Mr. Maletz. This is confidential to file from Austin J. Tobin, executive director, dated Thursday, March 5, 1959, subject "Commuter Railroad Discussions—Proposal of Robert W. Purcell for Equipment Trust Financing."

Commissioner Dwight Palmer had advised me by telephone yesterday morning (March 4) that he had just received a call from Mr. Robert W. Purcell, who is coordinating Governor Rockefeller's study of commuter transportation, in which Mr. Purcell advised him that he (Purcell) and Governor Rockefeller, were making excellent headway in formulating their plan for the commuter rapid transit problem in New York. That part of this plan was to be the financing of necessary commuter railroad cars and other

Excerpt from Exhibit S-40

equipment by the port authority on some basis similar to equipment trust financing. Mr. Purcell said that they believed they ought to have a bistate statute authorizing and directing the commissioners of the port authority to handle such financing and that he would like to work out a draft of such a statute with Commissioner Palmer. Mr. Purcell had specifically mentioned the Long Island Rail Road and Commissioner Palmer asked him why the Pennsylvania, who owned 100 percent of the Long Island, would not undertake such financing. Mr. Purcell replied that the Pennsylvania is unwilling to do so and that there was also a question as to whether or not their credit would be sufficient to undertake it.

Mr. Purcell also urged that Commissioner Palmer might be interested in having the port authority undertake the same type of financing for the necessary Hudson & Manhattan equipment but Commissioner Palmer replied that he would certainly not advise the State of New Jersey to involve itself in some $50 million of equipment and rehabilitation financing for the Hudson & Manhattan and he therefore had serious question as to whether he wanted to pressure an agency of the State of New Jersey, such as the port authority, to get into such a proposal. Commissioner Palmer said that no one could be sure as to the proper function of the Hudson & Manhattan Railroad in the commuter picture say 5 years from now in the light of changes in the transportation pattern that were obviously ahead, particularly in New Jersey.

Mr. Purcell said that it was Governor Rockefeller's wish that Commissioner Palmer take this matter up with Governor Meyner and Commissioner Palmer agreed to do this and to advise Mr. Purcell of the Governor's views.

Commissioner Palmer then wrote a memorandum to Governor Meyner, including a recommendation that they refuse to support such a statute on the ground that any such financing program could prove very dangerous to the continued good credit of the port authority and its ability to continue to go forward with port projects which affected New Jersey as well as the whole port district. Further-

Excerpt from Exhibit S-40

more, Commissioner Palmer expressed the view that any attempt to pressure the commissioners of the port authority in a matter that affected their binding commitments to bondholders and their pledge to bondholders not to go forward with any projects that would adversely affect the credit of the port authority was dishonorable and was certain to be self-defeating. Commissioner Palmer also sent Governor Meyner a copy of our letter to Mr. Purcell of March 2.

This morning [March 5] Governor Meyner advised Commissioner Palmer that he had read both his memorandum and the port authority's letter to Mr. Purcell of March 2, that he fully agreed with them, and that he considered Mr. Purcell's proposal "ridiculous."

Commissioner Palmer advised me at 11:30 a.m. this morning that he had just finished a long telephone call to Mr. Purcell who had also put his associate Mr. Golub (also counsel to Herman Stichman, trustee of the Hudson & Manhattan), on the phone. He told Mr. Purcell that both Governor Meyner and he had reviewed his proposal and that they could not go along with it and that frankly they would not consider such legislation to be an honorable course. Commissioner Palmer says that during the course of the conversation he repeated this several times to Mr. Purcell.

Mr. Purcell asked if Commissioner Palmer realized that this meant that Mr. Purcell would have to tell Governor Rockefeller that New Jersey definitely refused to go along in Mr. Purcell's effort to obtain port authority financing of this railroad equipment and Commissioner Palmer replied that although he hadn't stated it just that way that that was the substance of Governor Meyner's and his own position.

Mr. Purcell argued that he regarded his proposal certainly as the least onerous of any suggestions that had been advanced for port authority participation in the commuter railroad problem. And Mr. Purcell said that both he and Governor Rockefeller considered commuter railroad financing to be the port authority's direct responsibility.

Commissioner Palmer advises me that at this point Mr. Purcell turned directly to repeated threats as to Governor

Excerpt from Exhibit S-40

Rockefeller's future attitude toward bistate cooperation, with particular reference to the port authority. He said specifically that "the next time New Jersey asks us to do something involving the port authority, we won't do it." Commissioner Palmer replied that he had much more faith in Governor Rockefeller than to accept Mr. Purcell's threat at face value. That he had confidence that Governor Rockefeller was a broadminded person who would not reject a port authority proposal, even though that proposal was supported by New Jersey, provided that Governor Rockefeller thought that it was a good project. Commissioner Palmer says that despite this effort at placating Mr. Purcell that Mr. Purcell kept returning to these threats of future retaliation by the State of New York against the State of New Jersey. He said "I hope you realize that you are closing the door for the future on anything New Jersey wishes to do through the port authority that involves the cooperation of New York."

Mr. Purcell also suggested that from the nature of some of the bills that were pending in the New Jersey Legislature in support of port authority participation in the operation of commuter transit service, he would question whether or not Governor Meyner's position on port authority financing of the rehabilitation and reequipment of these railroads would find support in the New Jersey Legislature.

Commissioner Palmer made notes of his own throughout this amazing conversation and he advises me that he will send me a copy.

Austin J. Tobin, *Executive Director.*

In other words, does this refresh your recollection, Mr. Tobin, that you were advised by Commissioner Dwight Palmer, that according to Mr. Purcell, both he, Purcell, and Governor Rockefeller considered commuter railroad financing to be the port authority's direct responsibility?

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Excerpt from Exhibit S-40

Mr. Tobin. It refreshes my recollection as to everything in that memorandum.

Mr. Maletz. Including that particular point?

Mr. Tobin. Including that.

Mr. Maletz. And to rephrase the question, does this refresh your recollection that Commissioner Dwight Palmer of New Jersey told you, in the course of this conversation, that Mr. Purcell said that both he and Governor Rockefeller considered commuter railroad financing to be the port authority's direct responsibility?

Mr. Tobin. That Purcell said that to Commissioner Palmer?

Mr. Maletz. Yes.

Mr. Tobin. That refreshes my recollection of that.

Mr. Maletz. Did Commissioner Palmer tell you, or does this refresh your recollection, that Commissioner Palmer told you that Purcell had advised him that both he, Purcell, and Governor Rockefeller were making excellent headway in formulating a plan for the commuter rapid-transit problem in New York, which would require port authority financing?

Mr. Tobin. Yes.

Mr. Maletz. And does this refresh your recollection that Commissioner Palmer advised you that Mr. Purcell stated that both he and Governor Rockefeller believed they ought to have a bistate statute directing the port authority to handle such financing?

Mr. Tobin. Yes; they both changed their minds, as you know, from the Purcell report.

Mr. Maletz. Well, talking about the situation as of March 5, 1959; that is clear, is it not?

Mr. Tobin. The memorandum is perfectly clear.

I think it an outrageous impropriety to the two Governors for you to have introduced such a memorandum, and

Excerpt from Exhibit S-40

I think nothing could more demonstrate the position we are taking here, and will—the State will—take in the case in court.

The Chairman. That may be your opinion. You were not asked a question in that regard, and we suggest that if you want to make a statement, you ask the Chair whether you have the privilege to do so. That is under the rules of the House of Representatives. You cannot make gratuitous remarks of that sort, Mr. Tobin. We think it is a proper question.

Mr. Maletz. Mr. Tobin, is Joseph A. Martino one of the New York commissioners of the Port of New York Authority?

Mr. Tobin. Yes; he is.

Mr. Maletz. And according to your annual report, Commissioner Martino was the president of the National Lead Co. and a director of the Chase Manhattan Bank; is that correct?

Mr. Tobin. That is correct.

Mr. Maletz. And according to your present recollection, was he appointed to the port authority board of commissioners in 1958 by former Governor Harriman, for an interim term, and then reappointed by Governor Rockefeller in January 1959?

Mr. Tobin. He was.

Mr. Maletz. Now, after your telephone conversation with Commissioner Dwight Palmer, did you ask Commissioner Martino to intercede directly with Governor Rockefeller in order to prevent from being adopted the Purcell plan calling for port authority financing of railroad commuter cars?

Mr. Tobin. Commissioner Martino is a commissioner of the port authority. I talked to him about it, and all other commissioners about it. And they did talk to Governor Rockefeller about it.

Excerpt from Exhibit S-40

Mr. Maletz. Did Mr. Martino advise you he would take this matter up directly with Governor Rockefeller?

Mr. Tobin. He did, and did take it up directly with him.

Mr. Maletz. Do you recall he was in Palm Beach, Fla., at the time?

Mr. Tobin. Yes; I do.

Mr. Maletz. And do you recall that from Palm Beach Commissioner Martino called Governor Rockefeller, who was then in Albany, called Governor Rockefeller twice, to urge him to disapprove the Purcell plan?

Mr. Tobin. I know that he communicated with Governor Rockefeller. He told me he did.

Mr. Maletz. Do you remember any more specific details, Mr. Tobin? Did you report this matter to the board of commissioners?

Mr. Tobin. What matter?

Mr. Maletz. About Commissioner Martino's telephone discussions with Governor Rockefeller?

Mr. Tobin. Everything we have discussed this morning was reported to the commissioners completely and continuously, and contemporaneously, and including their own actions and activities in the matter.

Mr. Maletz. Did you report to the commissioners specifically that Commissioner Martino, who was then in Palm Beach, called Governor Rockefeller twice about this matter?

Mr. Tobin. I do not remember.

Mr. Maletz. I show you for identification—

Mr. Tobin. I assume I did.

Mr. Maletz. A letter dated March 6, 1959.

Mr. Tobin. This is a letter to all of the commissioners of the port authority, including Commissioner Martino.

Mr. Maletz. I asked Mr. Tobin, if you would just identify the letter.

Excerpt from Exhibit S-40

Mr. Tobin. May I read it? Mr. Maletz, what bothers me about this is that—

Mr. Maletz. Did you write the letter, Mr. Tobin?

Mr. Tobin. Oh, yes. Is that this appears to be—

The Chairman. Let us have the letter back, please.

Mr. Tobin. At a date when the plan had been worked out and agreed upon.

The Chairman. Wait until a question is asked, Mr. Tobin. You will get an opportunity to respond in your own way.

Mr. Maletz. Do you recall having written this letter, Mr. Tobin?

Mr. Tobin. Yes, I did.

Mr. Maletz. That is your signature?

Mr. Tobin. Yes.

Mr. Maletz. Mr. Chairman, I would read the letter at this point. This is a letter dated March 6, 1959, to the various commissioners by Mr. Tobin:

MY DEAR COMMISSIONER: Commissioner Martino has had two telephone conversations with Governor Rockefeller about the proposals of Mr. Robert W. Purcell (who is acting as the Governor's transportation consultant), that the port authority should attempt to finance commuter railroad rolling stock and the rehabilitation of other commuter railroad equipment through some arrangement in the nature of what Mr. Purcell refers to as equipment trust financing. These telephone conversations took place on Wednesday evening, March 4, and Thursday morning, March 5, between Commissioner Martino's winter home in Palm Beach and the Governor's office in Albany.

Toward the conclusion of Thursday morning's discussion Commissioner Martino suggested the Governor might like to meet with the commissioners.

At yesterday's meetings of the finance, port planning and operations committees, at which the chairman, the honorary chairman, and Commissioners Colt, Hamilton, Kellogg,

Excerpt from Exhibit S-40

and Clancy were present, it was tentatively decided, subject to the convenience of the rest of the board, that the most convenient day and time for this preliminary meeting would be on the same day (Sunday, March 15) at 10 a.m. at one of the hotels in central Manhattan near the Governor's apartment.

This coming Thursday, March 12, is the date for the March meeting of the board. However, four of the New York commissioners will be out of town on Thursday so that we would not have a quorum and therefore cannot hold a board meeting. I suggest, therefore, that we hold the regular Thursday meeting of the board simultaneously with the 10 a.m. Sunday morning meeting to be held in connection with our preparation for the Governor's luncheon.

We will prepare a summary of Mr. Purcell's equipment-trust proposal and an agenda of such other port authority items as may come up for discussion during the course of the meeting with the Governor.

We have reserved suite 2111 for this purpose at the Hotel Savoy-Hilton (formerly the Savoy-Plaza) which is located on Fifth Avenue at the corner of 59th Street.

Arrangements for your convenient transportation to and from these Sunday meetings will be made through your office.

Sincerely,

Austin J. Tobin,
Executive Director.

Was that an accurate report to the commissioners?

• • •

Mr. Tobin. My letter to the commissioners?

Mr. Maletz. The letter I just read.

Mr. Tobin. I do not understand what you mean.

Mr. Maletz. Was this letter an accurate report to the commissioners?

Mr. Tobin. That letter simply calls—it sets dates for meetings?

Excerpt from Exhibit S-40

Mr. Maletz. Yes. Was the meeting held between Governor Rockefeller and the port authority commissioners at the Savoy-Hilton?

Mr. Tobin. No, it was not. That was a meeting before the meeting with the Governor. Then there was a meeting after that at the Governor's apartment.

The Chairman. Mr. Tobin, will you not—please answer questions, and then you can amplify them.

Mr. Tobin. I am answering them. I am answering them directly, sir.

The Chairman. Was such a meeting held?

Mr. Maletz. At the Savoy-Hilton on Sunday.

Mr. Tobin. Mr. Maletz asked me, was a meeting held with Governor Rockefeller at the Savoy-Hilton, and it was not.

The Chairman. Was there any meeting held at the Savoy-Hilton?

Mr. Tobin. Yes, with the commissioners of the port authority as called in that letter.

The Chairman. Who was present?

Mr. Tobin. I do not remember. But the most I would say, Mr. Chairman, my recollection is that practically all the commissioners of the port authority were there. We have minutes of those meetings, and you have the minutes of those meetings, so you know who was there.

The Chairman. Was anybody representing the Governor present?

Mr. Tobin. Not at that meeting. We went from there across to the Governor's apartment.

The Chairman. And you met with the Governor at the Governor's apartment?

Mr. Tobin. We had lunch with the Governor at the Governor's apartment.

Mr. Maletz. That was Sunday, March 15?

Excerpt from Exhibit S-40

Mr. Tobin. If that is what the letter says, yes, that is when it was.

Mr. Maletz. Now, at that particular meeting at the Governor's apartment, was Mr. Purcell's proposal for port authority financing of a rail commuter program, was that proposal dropped?

Mr. Tobin. I may say that I think it is very improper of you to inquire what went on in the meeting with Governor Rockefeller and the commissioners of the port authority.

Mr. Maletz. Was the proposal dropped?

Mr. Holtzman. This is the meeting at the hotel.

Mr. Tobin. The Governor was not there, sir.

The Chairman. At the meeting at the Governor's luncheon, was the final conclusion to the effect that the Purcell plan be dropped and discarded? You can answer, and I will ask the question, if you wish to reply, what prompted that conclusion. Now, is your answer "Yes" or "No"?

Mr. Tobin. At that time the proposals that we were talking about before, that had been discussed with the investment bond dealers, had been dropped. It had been dropped for quite some time. The discussions that we had at that meeting were discussions about the proposal as it stood then, which was the proposal that is enacted into law, and is the law of the State now.

Mr. Maletz. When were suggestions made by Mr. Purcell for financial assistance by the port authority in the field of commuter rapid transit dropped?

Mr. Tobin. Somewhere in between the events that you were talking about an hour ago, and somewhere—and this period of this letter, because at the period of this letter, they didn't exist any more, and at the period of this letter, as I recall it, Mr. Purcell had submitted his report, and his report contained the recommendation, which was sub-

Excerpt from Exhibit S-40

sequently enacted into law by the States of New York and New Jersey.

Mr. Maletz. Instead of the Purcell plan, is it not correct, the State of New York, under bistate legislative authorization, sponsored by the port authority——

The Chairman. Fix the dates.

Mr. Maletz. Let me ask you this question, Mr. Tobin.

According to your letter of March 6, Mr. Tobin, to the commissioners, Mr. Martino had two conversations with Governor Rockefeller, one on March 4 and one on March 5.

Was the Purcell proposal for port authority financing of railroad commuter cars dropped after those conversations?

Mr. Tobin. No. That proposal—my recollection is that that proposal was dropped considerably before that time.

Mr. Maletz. Well, let us see your letter again. Your letter says that—

> Commissioner Martino has had two telephone conversations with Governor Rockefeller about the proposals of Mr. Robert W. Purcell • • • that the port authority should attempt to finance commuter railroad rolling stock and the rehabilitation of other commuter railroad equipment through some arrangement in the nature of what Mr. Purcell refers to as "equipment trust financing."

Mr. Holtzman. May we have the date of that letter.

Mr. Maletz. Wednesday evening, March 4, and Thursday, March 5, were the dates of the phone calls.

My question is this: When, if you know, was Mr. Purcell's proposal for port authority financing dropped?

Mr. Tobin. I do not know when Mr. Purcell changed his mind on it.

Mr. Maletz. It was dropped, was it not, after Mr. Martino's telephone conversations?

Excerpt from Exhibit S-40

Mr. Tobin. I do not remember just what time is was.

I do know at the occasion of the port authority meeting that you referred to, the discussion was entirely about the proposal that was enacted into law.

Mr. Maletz. I am going to ask you about that now, if I may.

Mr. Holtzman. Just one question there. If that is so, Mr. Tobin, what was your intention in referring to these two conversations, if in fact the plan had already been abandoned?

Mr. Tobin. My recollection—and I want to say to you, Congressman, that it is a bit narrative—that the arrangement, and I think that becomes clear from the letter, too, for the meeting with the Governor, and the luncheon with the Governor, and whether he would be in New York over the weekend, that those were made by Commissioner Martino. Those arrangements were made. In other words, I did not say in that letter I have a call from Bob Purcell, or I have had a call from Governor Rockefeller, and the Governor wants to have lunch with us on Sunday, and therefore I suggest we have a meeting ahead of that time.

I say that Commissioner Martino had been in touch with him, and as a result of that, we are going to meet.

Mr. Maltez. Mr. Tobin, may I direct your attention again to a letter which you wrote to Mr. Ripley, dated March 17, 1959. This is a letter to Mr. Ripley:

> In the light of our discussion in your office on March 5 about commuter rapid transit and the port authority, I thought you would like to have the full transcript of our newspaper release.
>
> In the course of my discussions with Governor Rockefeller and Mr. Purcell subsequent to March 5 the proposal for port authority participation on the basis of what

Excerpt from Exhibit S-40

was called "equipment trust financing" or, for that matter, suggestions for any financial assistance by the port authority in the field of commuter rapid transit were dropped. We were then able to come to this combination of State advances and bonds guaranteed by the State, with the port authority simply carrying out the administrative and managerial work of the State's participation.

Thank you very much again for your letter of March 5. We were, as you know, shocked by Blyth & Co.'s refusal in this crisis to stand by the customers to whom they had sold port authority securities through the years. On the other hand, the Commissioners were absolutely certain that such an attitude would be at the ends of the earth from your sense of investment responsibility. And this prompted our immediate and direct appeal for your help—which, as on so many other occasions throughout the creation and development of the authority, was immediately forthcoming.

• • •

Mr. Tobin. What is the date of that again, Mr. Maletz?

Mr. Maletz. March 17. So on the basis of your letter of March 17, Mr. Purcell's plan was dropped after March 5; is that not correct?

Mr. Tobin. I do not remember what dates it was dropped.

Mr. Maletz. Is that not what your letter says?

Mr. Tobin. It was dropped sometime before March 17.

Mr. Meader. Mr. Chairman.

Mr. Tobin, I have your letter of March 6, which has been read, and the impression I get from that letter is that the purpose of this meeting on Sunday morning, before the Governor's luncheon, and the purpose of the meeting at the Governor's luncheon, was to discuss the Purcell equipment trust proposal, because your letter, the third paragraph from the end, says this:

We will prepare a summary of Mr. Purcell's equipment-trust proposal and an agenda of such other port authority items as may come up for discussion during the course of the meeting with the Governor.

Excerpt from Exhibit S-40

Would it not be a fair inference that Mr. Purcell's plan was dropped on the 15th at the luncheon you had with Governor Rockefeller?

Mr. Tobin. It would, Mr. Meader, but I do not remember it that way. That is my point. If you told me you wanted to go into this, I would have refreshed my recollection on it. But I do not remember it that way. My recollection is of a luncheon conference with Governor Rockefeller, Mr. Purcell, myself, Mr. Goldstein, at which we discussed only the plan which was encompassed in the Purcell report, and was enacted into law.

Now, that is the best of my recollection at this time.

Mr. Meader. And that the equipment trust idea had been dropped before you ever had the meeting?

Mr. Tobin. Had been dropped. But these things were happening within days and in shifts. And as you call me in here to be suddenly confronted by this, it is almost as if Mr. Maletz was concerned that I might remember some of these things. They happened fast.

Mr. Meader. Now, just a minute. Mr. Chairman, I think it comes with poor grace for Mr. Tobin to complain about surprise when he has refused access to the records of the port authority itself in which case he would have had full and complete information on everything which the committee had. But because of the obstruction, the committee has had to go to other sources and obtain these documents from the files of people that did business with the port authority. And it seems to me it comes with very poor grace to complain of surprise when it would have been very easy and simple to cooperate with the committee and let them have access to the files, in which case they would have been completely apprised of what the committee had in its possession.

The Chairman. I want to supplement what you say. The recalcitrance of the port authority officials, particularly in refusing to let us see their records, forced us to go to extremes involving considerable expense, involving infinite patience, involving the employment of governmental agencies, including the General Accounting Office, to aid our staff and counsel in endeavoring to ferret out matters which could very easily have been obtained if we had these records that we asked the port authority to submit.

I agree with you, it comes with ill grace for Mr. Tobin to take this kind of stand.

Mr. Maletz. Mr. Tobin, instead of the Purcell plan, is it not correct that the State of New York, under bistate legislative authorization, sponsored by the port authority, appropriated $20 million to the port authority to be used in purchasing commuter railroad cars for the purposes of renting them to commuter railroads operating them in municipalities in the State of New York?

Mr. Tobin. That is correct.

Mr. Maletz. And is it not correct that under this program—

Mr. Tobin. That was the Purcell plan.

Mr. Maletz. The Purcell plan called for port authority financing, did it not?

Mr. Tobin. No. The Purcell plan is in his printed report, and is a State document of the States of New York and New Jersey.

Mr. Maletz. I am talking about Mr. Purcell's original proposal.

Mr. Tobin. Those were his original discussions and proposals. That is not where he came out.

Mr. Goldstein. Mr. Maletz, what Mr. Tobin means is that the official Purcell plan on file with the Legislatures

of the State of New York and New Jersey called for the legislation.

Mr. Maletz. I am talking about the original proposal which your letter indicates was dropped subsequent to March 5—his original proposal called for port authority financing, did it not?

Mr. Tobin. Yes, sir. That was dropped. By Mr. Purcell.

Mr. Maletz. Subsequent to—

Mr. Tobin. By Governor Rockefeller.

Mr. Maletz. Subsequent to Mr. Martino's discussions, is that not right?

Mr. Tobin. I am not sure whether it was subsequent to that or not.

Mr. Maletz. Is that not what your letter says?

Mr. Tobin. No, it does not say that. It says that on those dates Commissioner Martino discussed that issue with Governor Rockefeller.

The Chairman. The letters speak for themselves, and the members of the committee will evaluate those letters in their own way.

Mr. Maletz. In order to get this in context, Mr. Chairman, may I repeat the last question to Mr. Tobin.

Instead of the original Purcell proposal, is it not correct that the State of New York under the bistate legislative authorization sponsored by the port authority appropriated $20 million to the port authority to be used in purchasing commuter railroad cars for the purpose of renting them to commuter railroads operating in municipalities in the State of New York?

Mr. Tobin. Under the official Purcell plan, that is what was done.

Excerpt from Exhibit S-40

Mr. Maletz. And is it not correct that under this program, the port authority is simply carrying out the administrative and managerial work of the State's participation?

Mr. Tobin. That is quite correct.

Mr. Maletz. Is it not correct that this bistate legislation prohibits the port authority from borrowing any money for the purchase of such cars unless and until New York State shall have guaranteed the payment of principal and interest thereon?

Mr. Tobin. That is correct.

Mr. Maletz. Does this legislation prohibit the port authority from pledging its full faith and credit or from pledging or using for this railroad car program any of its revenues and reserves pledged in support of consolidated bonds including the revenues of any of its existing facilities or any of its existing reserves?

Mr. Tobin. Yes; that is right.

Mr. Maletz. Is it correct that the port authority, even after it is authorized to issue bonds guaranteed by New York State, is authorized to pledge only the railroad cars purchased, the rentals therefrom, and the State's liabilities and its guarantees?

Mr. Goldstein. That is part of the statute, Mr. Maletz. If we are to accept——

Mr. Maletz. I am quoting directly from the bond indenture.

Mr. Goldstein. If it is a direct quote from the bond indenture, then the answer is yes.

Mr. Maletz. Is the answer to the question "Yes"?

Mr. Goldstein. If it is a direct quote.

The Chairman. Yes; it is.

Mr. Maletz. Is an amendment to the New York State constitution necessary to have a guarantee by the State of New York?

Excerpt from Exhibit S-40

Mr. Tobin. That is my understanding; Mr. Goldstein so advises me.

Mr. Maletz. Must such constitutional amendment be adopted by two successive legislatures and thereafter approved by a majority of the people in a popular referendum?

Mr. Tobin. Yes.

Mr. Maletz. The legislation by which the State of New York adopted the $20 million rail commuter car proposal has been effective since September 1959. How many new railroad commuter cars have been provided by the Port Authority up to this point under this legislation?

Mr. Tobin. None.

Mr. Maletz. Mr. Chairman, at this point I would offer the documents referred to dealing with the railroad commuter car problem for the record.

• • •

Mr. Tobin. I may say those negotiations on those are in very, very active daily progress, and there are certain reports as to that progress in the hands of the Governor, and the Governor will choose when, I assume, he wishes to make an announcement of what has been accomplished to date under this program. But he has not made that announcement as yet.

Mr. Holtzman. Has the port authority completed its own efforts in connection with this Purcell law?

Mr. Tobin. Mr. Holtzman, I could not say we have completed, because we are working on it every day, and certain phases have been completed, and certain others have not been completed. The New Haven Railroad is very close to bankruptcy.

Mr. Holtzman. I am trying to understand whether there is anything left for you to do, or whether it is all in the hands of the Governor.

Excerpt from Exhibit S-40

Mr. Tobin. No. There is lots for us to do. I meant there are certain reports on progress and status that were in the hands of the Governor, and that the Governor has the proper right to decide what he will do about them.

Mr. Maletz. Now, Mr. Tobin, I believe you previously testified that in March 1959 you appealed for the help of various invstment bankers who underwrite port authority bond issues in connection with Mr. Purcell's plan for the railroad commuter program.

In July of 1960, did you again appeal to these investment bankers for help in connection with this committee's investigation into the activities and operations of the port authority?

Mr. Tobin. At some stage I certainly did.

Mr. Maletz. Did you in or about July 1960 meet with officials of a number of these investment bankers?

Mr. Tobin. I believe so; yes.

Mr. Maletz. Do you recall that meeting?

Mr. Tobin. I recall such a meeting; yes.

Mr. Maletz. Where was that meeting held?

Mr. Tobin. National City Bank.

Mr. Maletz. Was it held on July 14, 1960?

Mr. Tobin. I don't know.

Mr. Maletz. Do you recall who was present?

Mr. Tobin. Generally and vaguely. The representatives of the various investment houses on the street.

Mr. Maletz. Was Harriman, Ripley; Drexel——

Mr. Tobin. Whatever the meeting was. There were 30 people there.

Mr. Maletz. I see. And you called this meeting to appeal to the investment bankers for help in connection with this committee's investigation?

Mr. Tobin. Yes; I called it to call to their attention the fact that that the assertions of power of this committee

Excerpt from Exhibit S-40

posed the gravest worry and concern to the whole tax-exempt municipal market, because if the assertions of power of this committee were correct, then one of the firm bases of the immunity of exemption of State and municipal bonds had been undermined, and I called their attention to the fact that in the *Shamberg* case, the whole argument of Government's counsel had been exactly the same argument that is offered here—that is, that the port authority is a Federal agency, and that the Government argued in the *Shamberg* case that being a Federal agency, it was not within the protection of the tax-exempt statute on municipal bonds which says municipal bonds, which says a State or municipal agency, State agency, or political subdivision.

And I told them that I thought very much the same questions were involved in your assertion that the port authority is a Federal agency subject to Federal control, Federal sovereignty, review, and consent to all its actions.

Mr. Maletz. Did you appeal to the investment bankers for help in stopping this committee's investigation into the activities and operations of the port authority?

Mr. Tobin. I appealed to them in calling this to the attention of State and municipal agencies throughout the country, and the people for whom they sell the bonds. Because I felt and still feel it was a matter of the most grievous concern to them.

Mr. Maletz. Did you appeal for their help in stopping this investigation?

Mr. Tobin. I said to them that this investigation, in my opinion, constituted a great threat to State and municipal financing. And this is your conclusion. You may take whichever conclusion you wish.

The Chairman. Wait a minute. Just answer yes or no. Did you appeal to these investment bankers or ask them to stop the activities of this committee?

Excerpt from Exhibit S-40

Mr. Tobin. I appealed to them that your activities were a grievous threat to State and municipal financing.

The Chairman. Did you ask them to, in turn, endeavor to stop the activities of this committee? You can answer yes or no.

Mr. Tobin. No; not in those words, no.

Mr. Holtzman. In any words.

The Chairman. What words did you use?

Mr. Tobin. The words that I am using now; that the activities, that your activities were a grievous threat to the future of State and municipal financing and its tax-exempt status.

Mr. Maletz. Mr. Tobin, at that meeting did you tell those present to get busy and have Congress stop this committee from putting the heat on the port authority?

Mr. Tobin. I made a long talk to that committee.

Mr. Maletz. Did you make some remarks similar to that?

Mr. Tobin. I do not recall remarks similar to that.

The Chairman. Mr. Tobin, we have a memorandum here.

Mr. Maletz. Did you tell those present——

Mr. Tobin. The expression, "put the heat on," is not one of my expressions.

Mr. Maletz. Did you tell those present that unless this committee was stopped, the port authority would be in an intolerable position?

Mr. Tobin. I think we are in an intolerable position right now. I would use the word "intolerable"; yes. I think this is all intolerable.

Mr. Maletz. Did you tell the investment bankers that unless this committee was stopped, the port authority would be in an intolerable position?

Mr. Tobin. I do not remember whether I did or not, but I certainly think the port authority is being subjected to an intolerable position.

Excerpt from Exhibit S-40

Mr. Maletz. Did you convey that thought?

Mr. Tobin. I would have tried to, I assume. I do not remember whether I did or not.

Mr. Maletz. Did you tell those present at this meeting if this committee were allowed to break loose the port authority, it might mean the end of the present Federal tax exemption for the securities of all port authorities in the United States?

Mr. Tobin. Oh, yes.

Mr. Maletz. In other words, Mr. Tobin, this was another instance, was it not, where you appealed to the investment bankers for help.

Mr. Tobin. Yes; it was.

Mr. Maletz. Did the investment bankers respond to your appeal?

Mr. Tobin. I am acquainted with various things——

Mr. Maletz. What did they do?

Mr. Tobin. They communicated with various State and municipal agencies through the country.

Mr. Maletz. Would you like to have the question reread?

Mr. Tobin. Yes.

(The last question was read.)

Mr. Tobin. I am aware of the fact, from reports I had from many of them, that they communicated with State officers and municipal officers, and, as you know very well, many of those Governors, attorneys general, State legislatures, State agencies, did take very proper action, and adopted many resolutions and carried on quite considerable activity of their concern, and are still doing so, and are still concerned about it.

Mr. Maletz. And I take it this was in part due to the response by the investment bankers to your appeal for help?

Excerpt from Exhibit S-40

Mr. Tobin. I hope so. I tried hard enough.

The Chairman. Despite that appeal on your part for help to the investment bankers, and despite whatever the investment bankers may have done, Congress, nonetheless, passed three separate citations for contempt against you and two of your associates by overwhelming majority.

Mr. Tobin. I would rather look at the brighter side—that 124 Members of Congress stood up for what I think was the impropriety of that action.

The Chairman. Well, we are in a democratic process here, and the majority rules. The overwhelming majority.

Mr. Tobin. You won that vote.

Mr. Maletz. Mr. Mintkeski, do you recall sending packets of information to these investment bankers?

Mr. Mintkeski. Yes; I do.

Mr. Maletz. Do you recall sending your card, with the handwriting notation, "more ammunition"?

Mr. Mintkeski. I may have, sir.

Mr. Maletz. Do you recall that you did?

Mr. Mintkeski. That is hard for me to say. I sent information out.

Mr. Maletz. Did you send an accompanying business card——

Mr. Mintkeski. I may have instructed my secretary to do that.

Mr. Maletz. With your notation, "more ammunition"?

Mr. Mintkeski. I could have, sir.

Mr. Maletz. Did you?

Mr. Mintkeski. I don't know.

Mr. Maletz. Let me show you this document and ask you whether you can identify it.

Mr. Mintkeski. Fine.

Mr. Maletz. Is that your handwriting?

Mr. Mintkeski. No, sir.

Excerpt from Exhibit S-40

Mr. Maletz. It is not?

Mr. Mintkeski. No, sir.

Mr. Maletz. Do you know whose it is?

Mr. Mintkeski. I have no idea.

Mr. Maletz. Is that your business card?

Mr. Mintkeski. Yes, sir.

Mr. Maletz. What does it say?

Mr. Mintkeski. The business card itself—it is printed.

Mr. Maletz. The handwritten notation.

Mr. Mintkeski. It looks like more ammunition. I guess that is what it is. More ammunition, sir.

Mr. Maletz. Did you, on behalf of the port authority, submit packets of information to various investment bankers in connection with this matter?

Mr. Mintkeski. Yes; I did.

Mr. Maletz. Were you present at this meeting of the investment bankers?

Mr. Mintkeski. Yes, sir; I was.

Mr. Maletz. When was it?

Mr. Mintkeski. I don't recall the date.

Mr. Maletz. Was it July 14?

Mr. Mintkeski. I haven't the slightest idea.

Mr. Maletz. I show you a letter and ask you if you can identify your handwriting. Is that your handwriting?

Mr. Mintkeski. Yes, sir; that is my signature.

Mr. Maletz. And does that letter refresh your recollection as to when this meeting was held?

Mr. Mintkeski. I forgot to look at the date.

Mr. Maletz. Take a look at the letter, if you would, sir.

Mr. Mintkeski. Sorry. That was held on July 14, according to that memorandum.

• • •

Mr. Maletz. Mr. Mintkeski, would you please sit down.

Mr. Mintkeski. If you wish.

Excerpt from Exhibit S-40

Mr. Maletz. I don't mean that in any surly way at all.

Mr. Mintkeski. No; I can talk better standing up. That is the only reason I do it. I can hear you better, you can hear me better.

Mr. Tobin. Mr. Mintkeski has never been called as a witness in any proceeding, and he is upset about it.

The Chairman. Wait a minute, Mr. Tobin, don't make those statements, because they are unfair and impertinent. Mr. Maletz suggested he sit down because he wants to interrogate you and not Mr. Mintkeski. That is all.

Mr. Maletz. Do you recall now that this meeting was held——

The Chairman. I am glad to see you smile, Mr. Tobin. That is the first smile I have seen on your face all morning.

Mr. Tobin. I thought I had been smiling.

The Chairman. It should be that way all the time.

Mr. Tobin. Thank you. Coming from you, sir, I hope you will do your best from here on to make it so.

The Chairman. I will try to make you smile.

Mr. Maletz. Do you recall now that this meeting was held on July 14?

Mr. Goldstein. Well, why don't you let Mr. Tobin see the letter?

Mr. Tobin. I am not quibbling about the date. There was such a meeting.

Mr. Maletz. How long did this meeting last?

Mr. Tobin. My recollection of it is under an hour.

Mr. Maletz. Did you subsequently have further conversations with these investment bankers in connection with their taking action with respect to this committee's investigation?

Mr. Tobin. I am sure I did; yes.

• • •

Excerpt from Exhibit S-40

[LETTERHEAD OF]

THE PORT OF NEW YORK AUTHORITY

March 3, 1959

Mr. Joseph Ripley
Harriman Ripley & Co., Incorporated
63 Wall Street
New York 5, New York

Dear Joe:

I am enclosing a copy of the Port Authority's letter to Robert W. Purcell in reply to his suggestion that the Port Authority consider the financing of new rolling stock, principally passenger cars, for the commuter railroads. As we advised you this morning and as you will note from our letter, the Commissioners have advised Mr. Purcell that:

> "After study and full consideration, the Board's conclusion is the same with regard to these suggestions of Port Authority participation in financing commuter railroad rolling stock. It remains legally and financially impossible for the Port Authority to provide the equipment under any credit conditions which would be of assistance to the railroads and within their capability."

We have advised Mr. Purcell (page 9) that:

> "Our analysis leads the Commissioners of the Port Authority to conclude, therefore, that these equipment proposals, no matter how set up, would materially impair the Port Authority's credit standing and its ability to fulfill its commitments. This makes it impossible for the Port Authority to participate in any such equipment financing."

Excerpt from Exhibit S-40

Along the lines of our discussions this morning, and particularly in the light of the reliance that your customers through the years have placed on the Authority's conscientious observance of their pledges and commitments to our bondholders, we would like to have the views of your firm on the effect of our acceptance, or attempted acceptance, of any such proposal on the Port Authority's credit.

For your information I am enclosing a copy of the letter that we received last evening from Halsey, Stuart & Co., Inc. in reply to our similar inquiry to that firm.

Cordially,

HOWARD S. CULLMAN
Honorary Chairman

Encls.

Excerpt from Exhibit S-40

[LETTERHEAD OF]

THE PORT OF NEW YORK AUTHORITY

March 2, 1959

Robert W. Purcell, Esq.
30 Rockefeller Plaza
New York, New York

Dear Mr. Purcell:

During the course of our discussion of the commuter railroad problem on February 24th you suggested that the Port Authority consider the financing of new rolling stock, principally passenger cars, with the railroads paying the Port Authority's cost, but without any down payment by the railroads and with payments extended over a period of 25 to 30 years. You asked us to consider some similar advance of funds for capital maintenance, including the rehabilitation of signalling systems.

As you know the Commissioners of the Port Authority had heretofore submitted to the Governors and to the Legislature of New Jersey, their conclusion that it is legally and financially impossible for the Port Authority to assume the railroads' increasingly heavy deficits from all or a part of their commuter operations. During the course of the past week they have reexamined that conclusion, particularly in the light of the type of equipment financing which you suggested on February 24th. After study and full consideration, the Board's conclusion is the same with regard to these suggestions of Port Authority participation in financing commuter railroad rolling stock. It remains legally and financially impossible for the Port Authority to provide the equipment under any credit conditions which would be of assistance to the railroads and within their capability.

Excerpt from Exhibit S-40

At the outset, we must repeat that the Port Authority simply has no revenues or reserves derived from its present operations and facilities which are either legally or financially available for the purchase of railroad equipment. All of the Authority's revenues over and above the costs of operation and maintenance are pledged in such a manner that they must find their way into our bond reserves and the reserves themselves cannot be used except to fulfill obligations to our bondholders. This flow of Authority revenues is governed by bond indentures and statutes which are contractual and which may not be impaired. As a consequence, any possibility of the Port Authority providing money to purchase railroad equipment must rest upon the premise that it can sell its obligations in some form to the public to raise the money. We shall now examine the soundness of that premise.

This premise must be appraised in the light of the magnitude of the requirements of the commuter railroads in the New York-New Jersey area. The Port Authority is a bi-state agency. It could not possibly propose to lend its credit to the New York commuter railroads and deny it to the New Jersey railroads. Furthermore, concurrent legislation in both States would be necessary to complete a workable plan and it is unthinkable that the Legislature of either State would permit a solution of the equipment problem of the railroads of the other state alone.

From our own inquiries and from some of the figures you have given us, we have estimated that the cost of replacing commuter passenger coaches now in use, but which have already been in service for 25 years or more would be between $250,000,000 and $300,000,000 at current prices. Of the 3,450 surburban passenger coaches which are listed by the commuter railroads in the metropolitan area, about 2,570 have been in service over 25 years including 257

Excerpt from Exhibit S-40

owned by the Hudson and Manhattan and 610 owned by the Long Island.

In our discussions you asked us to explore mechanisms by which we might assist in the solution of this phase of that commuter problem. While you stated that you had not yet focused on particular mechanisms, one of the ideas you asked us to explore was that the Port Authority might issue equipment trust certificates.

The true equipment trust certificate as it has been developed under the various plans does not, of course, pledge the trustee's general credit. The trustee is a mere administrative agent for beneficial ownership participations sold to the public, the proceeds of which are used to purchase the equipment which is leased to a railroad or sold on a conditional sale basis.

Quite obviously if the Port Authority were to act as such a mere trustee, it would add nothing to what could be accomplished by any trust company. In fact, since the certificate would not be a Port Authority obligation, the earnings on it would not even qualify for tax exemption under the Internal Revenue Code. Such certificates could be sold if and only if they could also be sold with any other trustee.

We also considered the possibility that the Port Authority might use the proceeds of a Port Authority bond issue, whether of a new or conventional type, to purchase equipment trust certificates which would be serviced by a conventional trustee rather than by the Port Authority itself. We realized, however, that this, too, added nothing to the picture. Since the certificates are evidences of ownership in the rolling stock, under this plan the Port Authority would really be buying the rolling stock. The equipment trust device would add nothing to the possibility of a direct

Excerpt from Exhibit S-40

purchase by the Port Authority if that were otherwise feasible.

We concluded, therefore, that the equipment trust device served no useful purpose in the context of our inquiry. What we were left with, therefore, was a blunt recognition of the fact that we had to appraise the legal and financial possibility of selling Port Authority bonds to raise money to purchase railroad commuter equipment, hoping to recover the investment from rental or conditional sales payments which the commuter railroads might be able to afford and as to which they could provide acceptable evidence of their ability to pay.

We first considered the possibility of a Port Authority obligation not secured by the general credit of the Port Authority but secured only by the equipment itself and the prospect of receiving payments from the railroads over the 25 to 30-year term, without a down payment—the terms which you suggested. This possibility broke down at once because the security would be utterly unsaleable. At least it would be no more saleable if issued by the Port Authority than it would be if issued in the form of a conventional trust certificate on the same terms. In fact, your own premise was that a conventional equipment trust certificate without a down payment and with a 25 to 30-year term could not be sold and that that is why the Port Authority might help if it were able to do so. The premise is certainly sound, but it also produces the result that we could not sell such an obligation since it would have no more security than a private equipment trust certificate.

What would be needed to make a saleable Port Authority obligation would be a pledge of the General Reserve Fund. This fund is the Port Authority's medium for pooling its revenues and assuring its bondholders against the possibility of temporary or compassable deficits.

Excerpt from Exhibit S-40

On examination this alternative also proves to be both legally and financially impossible. Quite obviously, our bondholders would not have loaned us over $850,000,000 (excluding refundings) without requiring contractual assurances that the Port Authority would not undertake such deficit financing as would make its reserves illusory, materially impair the Authority's credit and its ability to fulfill commitments to its bondholders.

The fact is that our contract with Consolidated Bondholders is quite specific in the following provisions:

1. Before the Port Authority has the legal power to pledge the General Reserve Fund in financing a new facility such as these railroad cars would be, the Commissioners must first investigate the financial prospects of the new facility and then certify that the financing will not, during a stated period, "materially impair the sound credit standing of the Authority or the investment status of Consolidated Bonds or the ability of the Authority to fulfill its commitments, whether statutory or contractual or reasonably incidental thereto, including its undertakings to the holders of Consolidated Bonds." Without such certification the Port Authority cannot pledge any of its reserves in support of the financing of a new facility or operation.

2. The moment a pledge of the General Reserve Fund is involved the required size of that fund itself increases at once by 10% of the principal amount of the new bonds.

3. Finally, the debt service coverage requirement of the Port Authority in connection with the issuance of new Consolidated Bonds requires the Port Authority to compute maximum prospective debt service on all its

Excerpt from Exhibit S-40

bonds including the new bonds and then to be in a position to certify a 1.3 times coverage by net revenues.

The most obvious result of these contractual commitments is that the Port Authority would need a rental or other payment by the railroads equal to 1.3 times the debt service on the $250,000,000 to $300,000,000 of Port Authority bonds to be issued, to avoid diluting the Port Authority's borrowing capacity needed to fulfill commitments. This requirement would substantially reduce the possibility that the Port Authority's participation would be of any practical value to the railroads in their present financial condition, even if it were legally and financially possible.

Another obvious result of these contractual prerequisites to Port Authority financing is that the Authority would have to divert $25,000,000 to $30,000,000 from other revenue sources in order to keep the General Reserve Fund at the 10% contractual figure since no down payment by the railroads is contemplated.

Moreover, to meet these contractual commitments to bondholders, the Commissioners of the Port Authority would, of course, have to have reasonable and satisfactory assurance that the required rentals could be paid by the commuter railroads. In appraising the possibility of any such assurance, we looked into the history of railroad equipment trust certificates which have been publicly sold. The terms of these instruments represent a fair market gauge of the security behind such an arrangement under which rolling stock is made available to a railroad. We found five essential elements of this type of financing which would appear impossible in the context of the proposal you asked us to consider:

Excerpt from Exhibit S-40

1. The railroads make a down payment of as much as 25 percent of the total cost of the rolling stock;
2. The term over which the railroads are required to repay the balance of the owner's cost does not exceed 15 years;
3. The equipment is for the most part freight and not passenger cars;
4. The equipment is non-specialized, high[illegible] adaptable and readily saleable; and
5. The prospects of the carrying charges being met during the specified term are excellent.

As you know, the importance of the down payment and relatively short term lies in the fact that it provides a cushion or "equity" against possible default. The rapidity with which undepreciated equity builds up under the one to fifteen year trust with down payments ranging from 10 per cent to 25 per cent is indicated in the following table:

	Percentage of Equity in Cost of Equipment 1-15 Year Trust Original Equity		
	25%	20%	10%
Inception of trust	25.0	20.0	10.0
at end of 1st year	30.0	25.3	16.0
2nd year	35.0	30.6	22.0
3rd year	40.0	36.0	28.0
4th year	45.0	41.3	34.0
5th year	50.0	46.6	40.0
6th year	55.0	52.0	46.0
7th year	60.0	57.3	52.0
8th year	65.0	62.6	58.0
9th year	70.0	68.0	64.0
10th year	75.0	73.3	70.0
11th year	80.0	78.6	76.0
12th year	85.0	84.0	82.0
13th year	90.0	89.3	88.0
14th year	95.0	94.6	94.0

On the contrary, the schedule which you suggested for Port Authority financing along these lines—a 25 year payoff with no down payment—would start at zero at the inception of the trust and show the undepreciated equity increasing by only 4 per cent a year. At the end of the fifteenth year, fully 40 per cent of the cost would remain unrecovered under the 25 year program, whereas all of it would have been recovered under the 15 year program.

What is more, the 25 year payoff program so closely corresponds to the annual depreciation that the owner would never have any true equity in the equipment. What the owner would have at any time is aging equipment worth little or nothing more than the amount of unrecovered cost. Even when the Federal Government was setting up a railway aid program in the 1958 National Transportation Act (P.L. 85-625, 85th Cong.) it withheld from the Interstate Commerce Commission power to guarantee any loans for railroad aid if "the terms of such loan permit full repayment more than fifteen years from the date thereof."

A relatively short repayment term is extremely important because the only real redress which the owner has if the railroad defaults is to threaten to remove the cars and sell or lease them to another railroad. The ability to do this at a price which would recover all of the cost of the cars not already received from the original railroad is extremely doubtful if the trustee or other owner, in order to recover the balance, must receive practically 100 per cent of their depreciated value at that time.

You stated your opinion that there was no real danger that a commuter railroad would default on any obligation to the Port Authority because the railroad would need its rolling stock to operate. You suggested that therefore the bankruptcy court would order the trustee in bankruptcy to pay the rent or other payment in order to keep the railroad

operating. Our difficulty in accepting this argument arises from the fact that the terms of payment which you proposed would drastically alter the bargaining positions which usually obtain between a trustee owner under an equipment trust and a trustee in bankruptcy who is under instructions to continue operations. When the court and the trustee in bankruptcy understand that the owner of the cars has no real ability to remove them because there is no better market for them, there is no reason to assume that negotiation would not be undertaken to require the car owner to scale down his claims along with those of all other creditors.

There are two other critical aspects of your suggestions that the Port Authority consider the financing of $250,000,000 to $300,000,000 of railroad equipment. First, as we noted above, most existing loans of this kind are to finance freight cars. As of the end of 1958 the distribution of equipment being publicly financed by equipment trust certificates was as follows:

Freight Cars	283,911
Steam Engines	118
Diesel Engines	11,600
Passenger Cars	2,119

Even the relatively few passenger cars are not so specialized as would be most of the new commuter equipment required for the New York and New Jersey railroads. Consider, for example, the equipment needs of the Hudson & Manhattan. The H & M cars are narrower and shorter than most, in order to operate through its present tunnels. We do not know of a single other potential user of such equipment outside of the New York-New Jersey metropolitan area.

Excerpt from Exhibit S-40

The case of the other commuter railroads, while not so extreme, nevertheless involves specialized equipment. These cars would not be saleable for long haul passenger transportation. They could be used only by other railroads engaged in commuter passenger transportation, having re-sale value only in the metropolitan centers of Boston, New York, Philadelphia, Chicago and San Francisco. Yet in each of these centers the commuter railroads are having the same financial difficulties as the New York and New Jersey railroads. They are therefore not potential purchasers in a position to pay a fair purchase price for the cars if a New York or New Jersey railroad defaults.

The second additional and critical aspect of the Port Authority's position as the owner of commuter rolling stock involves the fact that it is a public agency of the two States. Prospective bondholders would have very serious doubts as to the Port Authority's ability to remove cars from a defaulting New York or New Jersey railroad. They would reason that the Port Authority would be subjected to tremendous political and public pressures to permit the continued use of the cars, even though the rental or other payments due to bondholders were in default.

All of these considerations of the difficulty or impossibility of recovering the cost of the railroad cars in the event of default might be irrelevant if we were dealing with first class railroad credits. However, the payments will be due from railroads almost all of which admit that they are either in bankruptcy, or just emerging from bankruptcy, or are on the brink of bankruptcy, or at best in tenuous financial condition.

The H & M is in bankruptcy. The Long Island has emerged from bankruptcy only after many concessions on the part of the State, the municipalities and their mortgage bondholder (the Pennsylvania Railroad)—many of which

Excerpt from Exhibit S-40

concessions are only temporary. Aside from the New York Central and the Pennsylvania, all of the other railroads in the area are so shaky financially that their general credit bonds are rated as "Caa" (Erie and Lackawanna) or "Ca" (New Haven)—by Moody's Investors Service. According to Moody's, the "Caa" rating is for bonds which "are of poor standing. Such issues may be in default or there may be present elements of danger with respect to principal or interest." The "Ca" rating which Moody's has given the New Haven bonds labels them as "speculative in high degree. Such issues are often in default or have other market shortcomings." The New York Central, which has achieved a "B" rating thereby falls in the category where its general credit bonds "generally lack characteristics of a desirable investment. Assurance of interest and principal payments or of maintenance of other terms of the contract over any long period of time may be small." Even the Pennsylvania achieves no more than a "Ba" rating for its general credit bonds so that they "are judged to have speculative elements; their future cannot be considered as well assured. Often the protection of principal and interest payments may be very moderate and thereby not well safeguarded during both good and bad times over the future. Uncertainty of position characterizes bonds of this class."

In addition to all of these circumstances, our Commissioners would also be confronted with the serious effect of such a project on the Authority's credit, in arousing in investors the fear that: (1) the Port Authority was so deeply involved in the railroad commuter deficit problem that it would be unable to extricate itself from responsibility also for tens of millions of dollars of annual *operating* deficits which the commuter railroads state that they are suffering in the New York-New Jersey area now, without

Excerpt from Exhibit S-40

considering any debt service on a rehabilitation and improvement program; and (2) that the Port Authority would have been ear-marked by the two States as the dumping ground for deficit operations of all kinds.

We developed these dangers in our earlier communications to the Governor and to the New Jersey Legislature. They are inseparable from the equipment proposals which you have asked us to review.

We reviewed our conclusions on Port Authority financing of transit systems with Halsey, Stuart & Co., Inc., Drexel & Co., Glore, Forgan & Co. and Ladenburg, Thalmann & Co., syndicate co-managers which traditionally bid on Port Authority bonds. They replied as follows:

> "In our opinion, any involvement, such as the financing of commuter passenger cars for the railroads in the New Jersey-New York metropolitan area, would have a most serious and adverse effect on the credit of the Port Authority. I know the Commissioners of the Port Authority appreciate the fact that even if the Port Authority could legally finance the purchase of such equipment for the local commuter lines, investors are well aware of the financial problems of the commuter railroads and any such action on your part would have an adverse effect on your credit."

When the question of pledging the Authority's General Reserve Fund to finance commuter railroad systems, was before the Committees of the New Jersey Legislature last November, Mr. Reginald M. Schmidt of Blyth and Company (co-managers of another syndicate which consistently bids on Port Authority bonds) wrote:

Excerpt from Exhibit S-40

> "If the Port of New York Authority is to continue expanding its present facilities and other facilities that lend themselves economically to sound revenue bond financing, it would be fatal to the Port's credit if they undertook to finance transit systems by pledging its surplus revenues and general reserve fund.
> "For many years this firm has taken leadership in building up the credit and broadening the market of the Port of New York Authority bonds. I am sure many investors including those whom we have interested would become alarmed if there were any serious consideration by the Commissioners of their entering this field."

And the "Daily Bond Buyer", the trade paper for municipal bond dealers all over the country, said:

> "• • • The Port Authority has excellent reasons and spelled them out plainly early this month in a series of analyses of commuter railroad deficits, the experience of transit systems in other Metropolitan Areas, and *the effect on its own credit and activities of any attempt to participate.* As to the latter, there are impassable legal obstacles and the financial results would be ruinous."

Finally, we should point out that the basic obstacles to a pledge of the Port Authority's Reserves, which I have reviewed, could not be solved even by legislative action in both States. On the other hand, the 1958 National Transportation Act of the Federal Government is available and was designed (as the Port Authority was not) to facilitate a loan of public credit in support of railroads which are in

Excerpt from Exhibit S-40

financial distress. If this Act in its present form imposes standards for railway aid financing which are too rigid to meet the requirements you have outlined, it would seem that they could be amended by Congress.

Our analysis leads the Commissioners of the Port Authority to conclude, therefore, that these equipment proposals, no matter how set up, would materially impair the Port Authority's credit standing and its ability to fulfill its commitments. This makes it impossible for the Port Authority to participate in any such equipment financing.

In this letter we have not reviewed the effect of such a venture on the Port Authority's responsibility, under the Port Compact of 1921, to carry forward a self-supporting program of port development. Nor have we reviewed its effect on our outstanding commitments within the scope of that program. Both of these consequences are covered in the Commissioners' statement to the New Jersey Legislature, which concluded that:

> "At the present time, as is well-known to the Committees, the Port and its activities provide economic support for one out of every four of the 13 million people in the Port District. The responsibility for assuring the continued economic pre-eminence of the Port District, both through providing modern port facilities and promoting the port's commerce, is a responsibility of the very first importance to the people of New Jersey and New York. It would be a great public disservice to the people of New Jersey, and even to the New Jersey rail commuters themselves, if the credit of the Port Authority—which constitutes its whole ability to go forward with its work of port development—were destroyed, as it

Excerpt from Exhibit S-40

> would most certainly be by any attempt to (direct the Port Authority to finance, improve and operate commuter railroad service)."

In view of the effect of this proposal on the Port Authority financing and program, we deem it imperative that the Chairman of our Finance Committee, Commissioner S. Sloan Colt, and I meet with you immediately.

Sincerely,

Austin J. Tobin
Executive Director

Excerpt from Exhibit S-40

30 Rockefeller Plaza
New York 20, N. Y.

Room 5600

March 4, 1959

Mr. Austin J. Tobin
Executive Director
The Port of New York Authority
111 Eighth Avenue
New York 11, New York

Dear Mr. Tobin:

I acknowledge receipt of your letter of March 2nd and I have noted its contents. I am taking the liberty of addressing this letter to you so that I may be certain that I understand completely your position. My uncertainty is due to the emphasis you place upon such factors as the position of the Hudson & Manhattan (which I never visualized as part of the program) a $250,000,000 cost (which I consider to be greatly in excess of the needs) and certain specific lease terms (which I expressed as my ideas, but certainly not as inflexible requirements).

I think I am correct in interpreting your letter as expressing the position of the Port of New York Authority that, under no circumstances, regardless of the amount of money involved, the credit standing of the particular railroads willing to enter such a program, or the terms and conditions of the lease obligations which might be negotiated, would the Authority be prepared to participate in this kind of a program. I would appreciate it if you would confirm the correctness of this interpretation or make such other observations as you might think appropriate because

Excerpt from Exhibit S-40

I wanted to be sure that you have not predicated your views solely on the specific situation as outlined in your letter, whereas, under other or different circumstances, you might be prepared to consider favorably a participation in this kind of a solution of this public problem.

Inasmuch as I am presently preparing a report to the Governor regarding many phases of the transportation crisis and am working against a deadline, I am having this letter delivered by hand with the hope that you may be able to give it very prompt attention.

As stated to you over the telephone yesterday, I shall be happy to meet with you and Mr. Colt whenever you wish.

Sincerely yours,

R. W. Purcell

RWP/s

Excerpt from Exhibit S-40

LETTERHEAD OF

THE PORT OF NEW YORK AUTHORITY

March 5, 1959

Mr. Robert W. Purcell
30 Rockefeller Plaza
New York 20, New York

Dear Mr. Purcell:

Thank you for your further inquiry of March 4th. In reply, please be advised that in reviewing the Port Authority's legal and financial inability to pledge reserves already committed to its bondholders, for the purchase of equipment for the use of commuter railroads, we made the assumptions set forth in my letter of March 2nd.

They were based almost entirely on your outline to me of your objectives, and in fact they constitute the only realistic assumptions we could make.

We assumed that a bi-state agency such as the Port Authority could not attempt to finance only the railroads terminating in one of the two states and refuse to finance those terminating in the other state, when all have a common financial problem. You immediately agreed with this assumption when I suggested it. Certainly the Hudson and Manhattan, whose counsel has just been added to your staff, could not be omitted from a bi-state agency's program of commuter railroad financing. In fact, you yourself included the Hudson & Manhattan's capital requirements in our discussion during the course of our first meeting and asked me to submit a memorandum on its financial requirements as we saw them, which I did on February 23rd.

Excerpt from Exhibit S-40

In our letter of March 2nd we assumed a $250,000,000 to $300,000,000 cost based again on the only realistic assumption we can make and based on the actual number of over-age commuter cars in use in the area and the present cost of replacement. We did not include the necessity of rehabilitating signalling equipment, and other essential capital maintenance which, in the cases of the Long Island and Hudson and Manhattan alone are estimated by Mr. Goodfellow and Mr. Stichman at $40,000,000. I am surprised that you now take the view that is greatly in excess of the needs of the New York and New Jersey commuter railroads, when both you and Mr. Goodfellow, whom you sent to see me, estimated the Long Island's requirements alone at $70,000,000 and Mr. Stichman places the Hudson & Manhattan's needs at $50,000,000. The remainder is taken up by the needs of the New Haven, Erie, Lackawanna, Jersey Central, New York Central and Pennsylvania. At our meeting in my office on February 25th, Mr. Genet put these requirements of the Long Island, and the commuter services of the New Haven and New York Central at $200,000,000.

Certainly the people who buy the Port Authority's bonds —insurance companies, banks and private individuals— when they came to appraise our credit, would have to assume that this bi-state agency would be committed to the entire $250,000,000 to $300,000,000, with the possibility of being called upon to finance additional commuter operating deficits later on. We know of no way, short of a constitutional restriction, which would freeze the Port Authority's participation in railroad aid financing to the needs of anything less than all the commuter railroads in the area, to only their equipment needs or to their needs only at this time.

Excerpt from Exhibit S-40

On the same basis, there is no question of appraising "the credit standing of the particular railroads willing to enter such a program." All of the commuter railroads are involved from the point of view of appraising a disastrous impairment of Port Authority credit, no matter how you might attempt to limit any initial plan. In this connection we did not make any asumptions of our own as to the credit standing of the commuter railroads. Instead, we used the Moody's Investors' Service ratings of their general credit obligations.

As we pointed out, with the type of specialized and unsaleable commuter equipment which the railroads need we would have little more than their general credit behind their promise to pay, whereas in any feasible plan the Port Authority's obligation to pay principal and interest on our railroad aid bonds would be absolute.

When we came to assume "the terms and conditions of the lease obligation which might be negotiated," we accepted your completely reasonable assumption that the commuter railroads were not in a position to make any normal down payment or to pay off these new obligations within the normal term used by equipment trust financing. Any requirements which a Port Authority lease might impose which approached this normal down payment and term would defeat your entire purpose of helping the railroads out of financial distress and at the same time make the Port Authority's participation unnecessary, since private financing should then be available.

In fact, Mr. Goodfellow, whom we met at your suggestion, and Mr. Genet of your staff expressed the view that the Long Island, to accomplish its objectives, would need a 30-year pay off payment period, could make no down payment, could procure no guarantee from its owner, the

Excerpt from Exhibit S-40

Pennsylvania Railroad, and could not even procure a subordination of the Pennsylvania Railroad's deferred claim for interest on the Long Island's mortgage bonds to the proposed new Port Authority obligation.

Mr. Goodfellow also made it clear that the Long Island, even with these extreme departures from normal equipment financing, could not undertake to pay more than the actual debt service we might incur on our obligations issued to finance the Long Island's requirements. In our prior letter we pointed out that under the contractual provisions of our Consolidated Bond Resolution our revenues must equal at least 1.3 times the maximum prospective debt service on our bonds before we can issue new Consolidated Bonds. As we pointed out to the New Jersey Legislature, our present program of contractual commitments brings us very close to this 1.3 requirement in the next few years. We could not continue to borrow new money if we diluted our revenues with a huge volume of railroad aid bonds against which we were receiving from the railroads only a one time coverage of our debt service. Consequently, with the Port Authority's entire future program imperiled on such a basis, the Commissioners could not possibly certify any such railroad aid proposal as conforming to the requirements of the bond indenture. They would be unable to do so under their pledge to outstanding bondholders even if there were no question of the railroad's ability to meet their obligations to the Port Authority.

No matter what the terms and conditions of the lease obligations would be the Port Authority credit could not but be impaired if the program did not afford either good security in the form of readily saleable equipment or a good credit in back of the promise to pay. Unfortunately, in our analysis, your proposal offers Port Authority bondholders neither good security nor good credit.

Excerpt from Exhibit S-40

There is one circumstance which we did not mention in our letter of March 2nd and which might make it possible for the Port Authority to undertake the program you suggested. This would be a guarantee by either or both of the States of the rental or other obligations of the railroads under any lease or other agreement entered into with them. We did not mention this because such a guarantee would make the Port Authority's participation unnecesary; the commuter railroads could sell their own equipment trust certificates with such a guarantee and presumably on much more satisfactory terms than we could hope to offer.

When our bondholders received the contractual assurance that our General Reserve Fund would not be pledged in connection with the financing of additional facilities unless the Commissioners of the Port Authority certified that the pledge would not impair the Port Authority's credit standing, the bondholders were relying upon the judgment nd integrity of the Commissioners of the Port Authority. This is a responsibility under their bond contracts which the Commissioners cannot, as a matter of law, delegate to anyone else. The fact is that the Commissioners, out of a wealth of experience in both public and private finance, with intimate knowledge of the Port Authority's commitments and finances, and after consultation with the managers of the investment syndicates which bid upon their bonds, have concluded that any Port Authority program which would be of assistance to the railroads, would damage the Port Authority's credit standing and impair its ability to fulfill its commitments.

It would appear to us that there is presently available under the National Transportation Act a source of financial assistance to the railroads which offers a much more fruitful, proper and appropriate avenue toward a possible solution of the railroads' financial problems.

Excerpt from Exhibit S-40

We realize there are certain provisions of that Act, such as the prohibition against the payment of railroad dividends during the period of the Federal guarantee, which may be unpalatable to railroad management. It would seem, however, that rather than recommend a course which the Commissioners of the Port of New York Authority would consider dishonorable and which we must reaffirm is legally, financially and contractually impossible, effort should rather be directed to amending those objectionable details of the existing Federal legislation.

Sincerely,

AUSTIN J. TOBIN
Executive Director

Excerpt from Exhibit S-40

[LETTERHEAD OF]

THE PORT OF NEW YORK AUTHORITY

LEE K. JAFFE
Director of Public Relations
Algonquin 5-1000

FOR RELEASE: Monday A.M.
March 16, 1959

New York, Mar. 16—Donald V. Lowe, Chairman of The Port of New York Authority, and S. Sloan Colt, Chairman of the Authority's Finance Committee, in a joint statement declared today that the Port Authority was quite pleased that, in the report submitted to Governor Nelson Rockefeller today by Mr. Robert W. Purcell, a way had been found that makes it possible for the Port Authority to be of assistance in working out the commuter rail problem.

Chairman Lowe and Commissioner Colt noted that the purchase of commuter rail equipment is to be financed, as recommended by Mr. Purcell, by a combination of New York State advances of funds, along the lines of the original George Washington Bridge financing, and by special Port Authority securities guaranteed by the State of New York, along the lines of the State Thruway financing. They stressed that such financing in no way impairs the legal and contractual obligations of the Port Authority to its bondholders, nor does it impair in any way the Authority's credit or its ability to continue its work of port, airport and arterial development.

The plan recommended by Mr. Purcell necessarily avoids any use of the Port Authority's existing revenues and reserves, all of which have been pledged to support outstanding bonds. It would substitute a state guarantee, after a constitutional amendment, to back up new bonds for the purchase of new commuter railroad cars which the Port Authority would rent to the railroads on a rental schedule calculated to recover the cost of the equipment. Until the constitutional amendment is adopted State funds would be advanced with which equipment orders could be placed and the program begin to roll.

Excerpt from Exhibit S-40

PORT AUTHORITY COMMISSIONERS REACT FAVORABLY TO RECOMMENDATIONS SUBMITTED TO GOVERNOR ROCKEFELLER BY ROBERT W. PURCELL, ADVISOR ON THE NEW YORK COMMUTER RAIL PROBLEM—2

The Commissioners said that the Authority's Executive Director, Austin J. Tobin, has worked in close collaboration throughout the past month with Mr. Purcell as well as with New Jersey State Highway Commissioner Dwight R. G. Palmer, who has been acting as Governor Robert B. Meyner's coordinator of the commuter problem in New Jersey. Commissioner Palmer has been kept fully informed and, from time to time, has reviewed the progress of the plan with both Mr. Purcell and Mr. Tobin.

In their statement Chairman Lowe and Commissioner Colt reaffirmed the view of the Commissioners of the Port Authority, as indicated in their statement before the New Jersey Legislature last November, that: "Both rail and highway transportation are essential to the economic welfare of the New York-New Jersey Metropolitan Region."

Excerpt from Exhibit S-40

It was for this reason that the Port Authority made available to the Metropolitan Rapid Transit Commission over $800,000 to undertake its recent interstate transit survey. It was also for this reason that the Port Authority has devoted its attention and study to the rail rapid transit problem for the past thirty years.

At the same time, the Commissioners emphasized: "The Port Authority's comprehensive program of providing modern port, terminal and transportation facilities on a self-supporting basis is indispensable to the continued preeminence of the Port of New York. The preservation of the Authority's credit is the whole basis of this program. Any approach to the rapid transit problem that involved the impairment of that credit would be self-defeating.

PORT AUTHORITY COMMISSIONERS REACT FAVORABLY TO RECOMMENDATIONS SUBMITTED TO GOVERNOR ROCKEFELLER BY ROBERT W. PURCELL, ADVISOR ON THE NEW YORK COMMUTER RAIL PROBLEM—3

"Mr. Purcell's recommendations to the Governor for the financing of commuter rail equipment is consistent with these principles" the Commissioners concluded. "It is therefore feasible and workable and at the same time safeguards the Authority's credit. If the two States authorize us to go forward they may be assured of our best efforts to work out our part of the program and in doing so protect the interests of the commuters, the States and the railroads themselves."

Excerpt from Exhibit S-40

EXCERPTS OF MR. ROBERT W. PURCELL'S RECOMMENDATIONS TO GOVERNOR NELSON ROCKEFELLER

The railroads serving residents of New York in commuter service are prepared to enter into agreements to continue to provide the service and to lease on reasonable terms over a long period of years such new equipment as will be required to revitalize the service. I therefore recommend that the Port Authority purchase commuter railroad equipment and lease the same to the railroads for, say, 25 years, at a rental which would reimburse the Authority for its total cost, including carrying charges, over the term of the lease. This would give the railroads the opportunity to obtain modern equipment without any down payment and on terms which will give them the advantage of the ability of the Port Authority to issue long-term bonds carrying tax-free interest coupons and hence the lowest possible financing costs.

If promptly adopted, such a program could commence to provide new riding comfort for commuters sometime during 1960. Inasmuch as railroads entering into such leases will contractually agree not only to pay the rental during the term of the lease but also to operate the equipment, this will relieve the communities of the ever-present threat provided by the Federal Transportation Act of 1958 that commuter service may be discontinued.

The view has been expressed that any extensive program of this character might have an adverse effect on the Port Authority's credit, particularly if equipment should be leased to railroads such as the New Haven and Long Island, whose financial condition is not strong. It is my personal belief that these roads, as well as the New York Central, will be bringing commuters to New York for more years than will be covered by the proposed leases and, that

Excerpt from Exhibit S-40

irrespective of what may happen generally to these roads, the agreed rental will be paid for the equipment. Nevertheless, I realize that both existing and prospective Port Authority bondholders might not share this view, and for the Port Authority to enter into such a program at this time on its own credit might have an adverse effect on the credit rating of its bonds. Furthermore, the indenture securing the Port Authority's outstanding Consolidated Bonds provides in substance that 1.3 times debt service on new bonds should be realizable from projects financed with the proceeds thereof. If this coverage requirement should be applicable to railroad equipment, the rental requirement would be excessive.

These adverse results may be avoided if the State assures the Port Authority that it will be held harmless in the event of loss resulting from default on a railroad equipment lease. This could be done either (a) through an advance to be made by the State to the Port Authority for this purpose, repayable only out of the rental and/or sale of the equipment, or through refinancing as described below or (b) by a State guarantee running either in favor of the bondholders or directly to the Port Authority. I am advised that a constitutional amendment would be necessary for either of the guarantees required under (b) above and that such amendment could not be submitted to the voters until the general election in 1961. The problem is so critical that any such delay would be unwarranted and, accordingly, I propose the adoption of necessary legislation to enable the State to allocate up to $20,000,000 of its capital construction funds so that they may be drawn down by The Port of New York Authority under the conditions stated above for the purpose of acquisition and leasing commuter equipment.

Excerpt from Exhibit S-40

By using these funds it should be possible to expand the equipment purchase program through monies derived from private banking sources based upon the pledge of the payment of railroad rentals or other payments on a normal equipment trust schedule and having the equity advantage, say to the extent of a 25% down payment on the equipment, provided by the State advances to the Port Authority. Repayment of the State's advances would be subordinated to such bank loans. By resort to such private sources, sufficient funds might be made available to meet the entire reasonable needs for new equipment of the three commuter railroads serving residents of New York.

In order to make it possible for the Port Authority to market securities either for its purchase of commuter railroad equipment to be leased to the railroads, or for repaying advances received from the State for this purpose, it would be necessary for the State of New York to guarantee the securities generally along the lines of its guarantee of New York State Thruway bonds. A constitutional amendment authorizing this guarantee could be submitted to two successive legislatures and to the people of the State at a general election as required.

The bi-state legislation necessary for this arrangement would involve only approval of the purpose of this type of financing and would leave both States free to go forward or not as each might choose with the type of commuter railroad equipment financing for which New York desires to employ the Port Authority's experience and trained personnel. In order to avoid a railroad rental equal to 1.3 times the debt service on the new securities, it would be necessary to avoid a pledge of the Port Authority's General Reserve Fund (already pledged to the holders of Consolidated Bonds and bonds of prior issues). Therefore, the

Excerpt from Exhibit S-40

legislation would contemplate a special issue of new Port bonds secured by the equipment, the rentals from or other payments by the railroads, and the State's guarantee.

If the definitive bonds to be sold by the Port Authority under the terms of the State guarantee to be permitted by the amendment to the Constitution are sold before the State's advances have been repaid out of collections from the railroads, then the advances would be repayable out of the proceeds of such definitive bonds.

Pending the adoption of a Constitutional amendment, New York legislation would be required to authorize the immediate advance to the Port Authority and to enable it to enter immediately into agreements with the railroads and the manufacturers for the purchase of new commuter rolling stock urgently needed for the continued safe operation of commuter rapid transit. This is necessary because the Port Authority has no revenues or reserves which can be pledged or applied to this purpose.

This is essentially the method followed by the two States in making advances for the start of construction on both the George Washington Bridge and the Staten Island Bridges. $17.5 million was advanced by the two states, $5 million by each state for the George Washington Bridge and $4 million by each state for the Staten Island Bridges. These advances were subsequently repaid to the States. The legislation providing for these advances for the George Washington Bridge, for example, (Chapter 761 Laws of New York 1926 and Chapter 6 Laws of New Jersey 1926) provided that "in aid of the prompt and economic construction of the bridge *** the State of New York agrees *** to provide and make available *** the sum of $5 million, or so much thereof as may be requisitioned." The George Washington Bridge and Staten Island Bridges financing statutes

Excerpt from Exhibit S-40

provided for the making of the advances in five equal annual installments. The legislation also provided for the subordination of the State's advances to the lien of the holders of securities issued to raise the balance of the construction costs.

The foregoing proposal would give to the people of the State the benefit of the experience and efficiency of the Port Authority and its broad background in all phases of transportation in the New York Metropolitan area. The Authority would, of course, have the right to decline to supply equipment unless it was satisfied that it was the right equipment, that it was needed, and that it would be reasonably justified under prevailing conditions. In other words, the Authority would be expected to apply sound business judgment in working out the program. Additionally, because the resources of the State would be involved, equipment purchases should be subject to review by the State Comptroller.

It will be necessary for the State of New Jersey to pass companion enabling legislation. I can see no valid reason for objection by that state. On the contrary, the enabling legislation passed by New York would make it possible for New Jersey to provide its railroads with new equipment, provided New Jersey advances funds or authorizes bond guarantees along lines similar to those proposed above for New York.

Suggested legislation to accomplish the foregoing is presently being prepared and will be forwarded to you shortly.

Exhibit S-44

(Memorandum dated April 22, 1974)

MEMORANDUM April 22, 1974

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

I am advised by counsel that at a meeting with Port Authority counsel and our New Jersey Counsel today, it was understood and agreed that upon the prospective enactment of the New Jersey legislation repealing the "1962 Covenant", the Trust Company would bring an action against the State of New Jersey and its officers seeking a declaratory judgment that such legislation is null and void because violative of the the State Constitution and that the 1962 Covenant is a valid and binding contract between the Authority and its bondholders. The Trust Company would seek recognition by the Court of its status as representative of the class of all outstanding bondholders and as indenture trustee of Consolidated Bonds Series 40 and 41, and its compensation, including fees and expenses of counsel, would be paid by the Authority.

As this action will proceed in the next several days, please let me know if you have any further questions following your general approval of proposed legal action expressed to me on April 18 and 19.

J. SINCLAIR ARMSTRONG

To: Dr. O'Leary
Mr. Heard

Exhibit S-56

MASSACHUSETTS PORT AUTHORITY

4¾% 1998

1961

	Date	Bid	Asked
March	1	108¼	109¼
	2	Not Reported	
	3	107¾	108¾
	4	107½	108½
Sun.	5	—	—
Mon.	6	—	—
	7	107¼	108¼
	8	107¼	108¼
	9	107¼	108¼
	10	107¼	108¼
	11	107¼	108¼
Sun.	12	—	—
Mon.	13	—	—
	14	107¼	108¼
	15	107	108
	16	106½	107½
	17	106½	107½
	18	106	107
Sun.	19	—	—
Mon.	20	—	—
	21	106	107
	22	105½	106½
	23	105½	106½
	24	105½	106½
	25	105½	106½
Sun.	26	—	—

Exhibit S-56

	Date	Bid	Asked
Mon.	27	—	—
	28	105½	106½
	29	105½	106½
	30	105½	106½
	31	105½	106½
April	1	No Prices Reported	
Sun.	2	—	—
Mon.	3	—	—
	4	105¼	106¼
	5	105	106
	6	105	106
	7	105	106
	8	105	106
Sun.	9	—	—
Mon.	10	—	—
	11	105	106
	12	105	106
	13	105	106
	14	105	106
	15	105	106

SOURCE: New York Times

Exhibit S-56

NEW YORK PORTS CONSOLIDATED

3-40% 1987

1961

	Date	Bid	Asked
March	1	95	—
	2	95	—
	3	95	—
	4	95	—
Sun.	5	—	—
Mon.	6	—	—
	7	95	—
	8	95	—
	9	95	—
	10	95	—
	11	95	—
Sun.	12	—	—
Mon.	13	—	—
	14	95½	—
	15	95½	—
	16	95½	—
	17	95½	—
	18	95½	—
Sun.	19	—	—
Mon.	20	—	—
	21	95	—
	22	94½	—
	23	94½	—
	24	94½	—
	25	94½	—
Sun.	26	—	—

Exhibit S-56

	Date	Bid	Asked
Mon.	27	—	—
	28	94½	—
	29	94½	—
	30	94½	—
	31	94½	—
April	1	No Prices Reported	
Sun.	2	—	—
Mon.	3	—	—
	4	94½	—
	5	94½	—
	6	94½	—
	7	94½	—
	8	95	
Sun.	9	—	—
Mon.	10	—	—
	11	94½	—
	12	94½	—
	13	94½	—
	14	94½	—
	15	94½	—

SOURCE: NEW YORK TIMES

Excerpt From Exhibit C-3

THE PORT AUTHORITY OF NEW YORK and NEW JERSEY

1972 ANNUAL REPORT

"The highlight of 1972 was the announcement by your Excellencies in mid-November of a bi-State plan for major rail mass transportation development by the Port Authority, and the passage of the necessary enabling legislation in New Jersey. Detailed engineering planning and negotiations on the $650 million project, which was planned by the Port Authority in close cooperation with the New Jersey Department of Transportation and the Metropolitan Transportation Authority, proceeded immediately in anticipation of legislative approval so construction could begin as soon as possble in 1973."

• • •

"PLANNING FOR THE FUTURE"

The most significant event of 1972 was the announcement by the two Governors of an agreement with the Commissioners of the Port Authorty on a bi-State plan of major rail mass transportation improvement by the Port Authority. The plan was developed by the Port Authority in close cooperation with the New Jersey State Department of Transportation and the Metropolitan Transportation Authority, a New York State agency. It calls for the expenditure of approximately $650 million for capital improvements to be financed by a combination of Federal, State and Port Authority funds. The Port Authority's investment in these improvements is expected to total $250-300 million.

Excerpt From Exhibit C-3

Legislation to authorize the project was passed by the New Jersey Legislature and signed by Governor Cahill before the end of the year.*

The plan provides for:

—rail rapid transit service on the Port Authority Trans-Hudson (PATH) System from Penn Station, Newark, into Union County to Plainfield, New Jersey, via Newark International Airport.

—direct rail service to Pennsylvania Station, New York in mid-Manhattan for New Jersey and New York riders of the Erie Lackawanna Railway in Bergen, Passaic, Morris, Union, Somerset and Essex Counties in New Jersey and Rockland and Orange Counties in New York. Under the plan, Erie Lackawanna commuters will thus have the option of direct service to mid-Manhattan as well as to Hoboken where transfer to PATH for the trans-Hudson trip would continue to be available.

—direct high-speed rail service between Manhattan and John F. Kennedy International Airport.

The legislation eliminates a previous statutory requirement that the Kennedy and Newark Airport projects must proceed simultaneously as a "single port development project."

By the end of 1972, the Port Authority was doing preliminary work on these plans in close cooperation with the two State transportation agencies, the Federal Government, the railroads and municipalities directly involved, and others. Detailed engineering planning and negotiations were under way in anticipation of legislative approval so

* Identical legislation was under consideration by the New York Legislature in March 1973 as this report went to press.

Excerpt From Exhibit C-3

that construction might begin as soon as possible in 1973 on one or more of the projects. The program is expected to be completed by the end of 1977.

The provision of rail service to Newark International Airport calls for the use of existing PATH trackage from Newark's Penn Station to South Street; new tracks running adjacent to Penn Central tracks from South Street to a new station at the airport, and a connection to the airport's planned internal transportation system.

New PATH tracks would run from Newark Airport south to a connection with the mainline of the Central Railroad of New Jersey, in order to use the CNJ right-of-way to Plainfield and to provide improved rail service to 7,600 daily CNJ riders who now change to PATH trains at Newark. The distance of the new PATH rail transit service is to be approximately 18 miles.

Preliminary steps were taken at year's end to implement the plan for expanded direct rail service for several branches of the Erie Lackawanna Railway to Pennsylvania Station, New York. This program encompasses direct commuter rail service for passengers from Morris, Union, Somerset and Essex Counties on the Morris and Essex Division of the Erie Lackawanna into mid-Manhattan by means of direct track connections at Kearny, New Jersey between the Erie Lackawanna and Penn Central; a new railroad bridge across the Hackensack River; and direct track connections at Secaucus between the Penn Central and the Erie Lackawanna's Bergen County line to serve the Meadowlands, Bergen and Passaic Counties in Northern New Jersey and Rockland and Orange Counties in New York. The plans also include extensive track and signal improvements, a new railroad yard and substantial improvements to Penn Station, New York.

Excerpt From Exhibit C-3

Significant travel time savings for some 20,000 daily Erie Lackawanna commuters desiring rail access to and from the mid-Manhattan area would be realized from this plan which also could provide other benefits such as direct rail service to projected new developments in both States.

Planning went forward as well with the Metropolitan Transportation Authority and the airlines for extending the Long Island Rail Road to Kennedy Airport to provide service to and from Penn Station in New York and Jamaica.

This project would provide an electrically powered rail service between Pennsylvania Station in Manhattan and a rail terminal station within the Central Terminal Area of Kennedy Airport. The approximate running time from Penn Station to an airline unit terminal at Kennedy would be 28 minutes, including the use of passenger distribution system.

A second service for Queens, Nassau and Suffolk counties would run from the Long Island Rail Road's Jamaica Station over the Montauk Branch to its intersection with the route taken by the trains from Penn Station. The service would then operate in common with the Penn Station service to the same Central Terminal Area rail station.

Brooklyn service would be provided from a station in Woodhaven, Queens, at a point where the airport route crosses Atlantic Avenue.

A separate passenger distribution system ("people mover") would link each airline unit terminal to the proposed rail terminal within the Central Terminal Area. This system to distribute passengers from the rail line to their individual airline destinations would also serve as an interline transportation system.

Excerpt From Exhibit C-3

The rail service between Manhattan's Penn Station and the Long Island Rail Road's Jamaica Station into Kennedy Airport is expected to accommodate over 10 million passengers annually by the year 1982.

In addition, negotiations began during the year with the Penn Central Transportation Company for PATH's operation and rehabilitation of Penn Station, Newark.

• • •

"Basic Policies and Financial Structure

The States of New Jersey and New York directed the Port Authority ". . . to proceed with the development of the Port of New York . . . as rapidly as may be economically practicable . . .". The Authority, however, may not levy taxes, assessments or pledge the credit of either State or any municipality. In other words, its program of public works was to be supported and financed by the private sector, and to this end the two States pledged their "cordial cooperation . . . in the encouragement of the investment of capital . . .".

In order to finance—on a self-supporting basis and without cost to the general taxpayer—the land, sea and air terminal, transportation and other facilities of commerce as directed by the two State Legislatures, it is necessary for the bi-State agency to conduct its affairs with prudence and to employ sound management practices in order to build a strong credit base and sound financial structure.

To achieve the continuing objectives of strength and stability in its financial structure and command the confidence of investors, it is necessary for the Port Authority to meet certain legal and fundamental financial standards.

The statutes establishing the General Reserve Fund provide for the pooling of revenues to the end that older facili-

Excerpt From Exhibit C-3

ties with established earning power can aid new projects during developmental periods until they reach their anticipated point of self-support. These statutes provide for the amount of the General Reserve Fund to be equal to ten percent of the total par value of the Authority's outstanding bonds including Consolidated Bonds.

The Port Authority's long-established policy is to retire bonded debt as rapidly as sound financial management permits and to maintain, at year-end, a combined amount in its reserve funds, including reserve funds in trust, equal to at least the next two years' mandatory bonded debt service. Acceleration of debt retirement before mandatory dates may be accomplished out of the General Reserve Fund only to the extent that reserve funds exceed the ensuing two years' debt service.

Bonds for an additional facility cannot be issued with a pledge of the General Reserve Fund unless the Port Authority Commissioners certify to investors that the pledge will not materially impair the sound credit standing of the Authority, the investment status of the Authority's bonds, or the ability of the Authority to fulfill its commitments and undertakings.

Judicious planning, advanced engineering techniques and sound management practices are utilized to bring new projects to their anticipated point of self-support as soon as possible.

Adherence to these requirements and policies has resulted in a sound financial structure which has been recognized by individual investors and financial institutions throughout the United States. Over the years, more than three and one-half billion dollars of Port Authority obligations have been purchased by investors, of which only one and one-half billion dollars was outstanding at December 31, 1972.

• • •

Excerpt From Exhibit C-3

"ADDITIONAL INFORMATION FOR BONDHOLDERS

Consolidated Bonds are direct and general obligations of the Authority and the full faith and credit of the Authority are pledged to the payment of debt service thereon.

All Consolidated Bonds, including any which may hereafter be issued, are equally and ratably secured by a pledge of the net revenues of all existing facilities of the Authority (not including cars acquired under New York State's Commuter Railroad Car Program) and any additional facility which may be hereafter financed in whole or in part through the medium of Consolidated Bonds, as provided in the Consolidated Bond Resolution. The prior liens and pledges with respect to certain of such net revenues in favor of General and Refunding, Air Terminal and Marine Terminal Bonds of the Authority referred to in the Consolidated Bond Resolution have been satisfied by the establishment and maintenance of the Special Air Terminal and Marine Terminal Reserve Funds in Trust • • • . All Consolidated Bonds are further secured by a pledge of the monies in the Consolidated Bond Reserve Fund, as provided in the Consolidated Bond Resolution.

On December 31, 1972, outstanding Consolidated Bonds totaled $1,523,334,000. Over the years, the Authority has issued $2,241,650,000 of Consolidated Bonds, exclusive of refundings.

The 1962 statutes adopted by the Legislatures of New York and New Jersey, which authorized Port Authority acquisition of the interstate Hudson and Manhattan Railroad, provided by way of a statutory covenant with the holders of affected bonds that deficit financing of additional passenger railroad facilities would be undertaken only

Excerpt From Exhibit C-3

within specific financial limits. Bi-state legislation is now pending which, after its enactment, would exclude obligations to be issued by the Authority from the category of such affected bonds. It may be noted that in connection with the issue of $100,000,000 par value of Consolidated Notes, Series Z, 3.60% due December 17, 1973, referred to above, Chase Manhattan Bank, First National City Bank, Morgan Guaranty Trust Company of New York, Chemical Bank, Manufacturers Hanover Trust Company, Franklin National Bank, Marine Midland Bank (New York), National Newark and Essex Bank, The Bank of New York, Fidelity Union Trust Company, Irving Trust Company, Marine Midland Bank (Western), Peoples Trust of New Jersey, United States Trust Company of New York, The Bank of Tokyo Trust Company and The County Trust Company each consented pursuant to Section 6 of both Chapter 209 of the Laws of New York of 1962 and Chapter 8 of the Laws of New Jersey of 1962 to the application for any railroad purpose authorized by the States of New York and New Jersey of any rentals, tolls, fares, fees, charges, revenues and reserves which have been or shall be pledged as security for such Notes, insofar as such application would otherwise not have been permitted by reason of the limitations imposed by the statutory covenant. In accordance with the policy of the Governors of New York and New Jersey and of the Authority, this consent by these purchasers of Consolidated Notes, Series Z avoided the addition of such Notes to the total amount of outstanding obligations to which the statutory covenant attaches. The need for such consent by the purchasers of future Authority obligations would be obviated by enactment of the pending legislation."

Excerpt from Exhibit C-4

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

1974 ANNUAL REPORT

"PLAINFIELD CORRIDOR SERVICE PROJECT

The Port Authority applied for federal capital funding for the Plainfield Corridor Service Project in April 1974. The project provides for a 17.5 mile extension of PATH from its present terminus at Penn Station, Newark, to Plainfield via stations serving Newark International Airport and Elizabeth.

In October at the request of the Urban Mass Transportation Administration, a joint Task Force composed of members of the Port Authority and the New Jersey Department of Transportation was established to reevaluate the PATH Plainfield project as well as other potential public transportation alternatives for the Plainfield Corridor.

"As the year ended, the Task Force's evaluation was presented to Governor Byrne, who announced his view on February 10, 1975 that the Port Authority should proceed with the PATH extension to Plainfield. Staff work is going forward on the necessary supplement to the Port Authority's Plainfield application for federal funding, revising the project cost estimates and federal aid requirements. The Joint Task Force estimated in its report that $278 million in federal aid is necessary for project work west of Newark, representing 80 percent of its estimated $347 million cost eligible for federal aid. The Port Authority is working with the State of New Jersey to determine how the local share of Plainfield project funding can be structured in keeping with the legal limitations

Excerpt from Exhibit C-4

on Port Authority participation and resolution of how any future operating deficits would be accommodated."

"PENN STATION (N.Y.) DIRECT ACCESS PROJECT

Port Authority staff continued to design and plan direct rail service into Penn Station, New York for commuter trains of the Erie Lackawanna Railway. Test borings were begun in 1974 for track connections between the Penn Central and Erie Lackawanna and for a new high-level fixed-span bridge over the Hackensack River. The Federal Railroad Administration also announced that federally sponsored management studies of Penn Station, New York were to be completed in the spring of 1975."

• • •

"NEW YORK STATE COMMUTER RAILROAD EQUIPMENT PROGRAM

A total of 467 air-conditioned passenger cars and eight diesel-electric locomotives have been purchased for use in commuter service within the State of New York on the Penn Central and Long Island railroads since 1962 under the New York State Commuter Railroad Equipment Program. To date, special state-guaranteed Port Authority bonds in the amount of $106,225,000 have been issued to finance rolling stock for commuter rail service and $86,160,000 are now outstanding."

• • •

"BASIC POLICIES AND FINANCIAL STRUCTURE

The States of New Jersey and New York directed the Port Authority "... to proceed with the development of the Port of New York ... as rapidly as may be economically practicable ..." The Authority, however, may not levy taxes, assessments or pledge the credit of either State or

Excerpt from Exhibit C-4

any municipality. In other words, its program of public works was to be supported and financed by the private sector, and to this end the two States pledged their "cordial cooperation ... in the encouragement of the investment of capital ..."

In order to finance—on a self-supporting basis and without cost to the general taxpayer—the land, sea and air terminal, transportation and other facilities of commerce as directed by the two State Legislatures, it is necessary for the bi-State agency to conduct its affairs with prudence and to employ sound management practices. Over the years, more than 3.5 billion dollars of Port Authority obligations have been purchased by investors of which 1.7 billion dollars was outstanding at December 31, 1974.

The statutes establishing the General Reserve Fund of the Authority provide for the pooling of revenues to the end that older facilities with established earning power can aid new projects during development periods until they reach their anticipated point of self-support. These statutes provide for the utilization of available net revenues to maintain the General Reserve Fund at the prescribed amount of ten percent of the total par value of the Authority's outstanding bonds.

The Port Authority's long-established policy is to retire debt as rapidly as sound financial management permits and to maintain, at year-end, a combined amount in its reserve funds, including reserve funds in trust, equal to at least the amount of the next two years' mandatory bonded debt service. Acceleration of debt retirement before mandatory dates may be accomplished out of the General Reserve Fund only to the extent that reserve funds exceed the ensuing two years' debt service.

Bonds for an additional facility cannot be issued with a pledge of the General Reserve Fund unless the Port Author-

Excerpt from Exhibit C-4

ity Commissioners certify to investors that the issuance of the bonds or that such pledge will not materially impair the sound credit standing of the Authority, the investment status of the Authority's bonds, or the ability of the Authority to fulfill its commitments and undertakings.

In 1974, the Legislatures of New York and New Jersey repealed a statutory covenant with holders of affected Port Authority bonds which permitted deficit financing of passenger railroad facilities in addition to the Hudson Tubes (Port Authority Trans-Hudson [PATH] System) only within specified financial limits. The covenant was originally adopted in 1962 as part of the statutes authorizing Port Authority acquisition of the inter-state Hudson and Manhattan Railroad. In 1973, the two States had enacted legislation to preclude application of the statutory covenant to the holders of obligations issued by the Authority after May 10, 1973.

In April 1974, the United States Trust Company of New York instituted litigation in New Jersey as Trustee for the 40th and 41st Series of the Authority's Consolidated Bonds, as the holder of a significant amount of outstanding obligations of the Authority, and as a class representative on behalf of the holders of all outstanding bonds of the Authority against the State of New Jersey and its Governor and Attorney General seeking a declaratory judgment that the action taken by the States in 1974 to repeal the 1962 statutory covenant violates the federal and state Constitutions. This action has been consolidated with another pending action in New Jersey which was instituted by private parties seeking to invalidate the statutory covenant. The actions in New Jersey are proceeding while similar actions instituted and pending in New York relating to the covenant and its repeal have not been progressed."

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Exhibit C-5

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

INVESTMENTS & REVENUES

Based on the same assumptions used in a similar compilation submitted as of 12/31/60 to Senator Frank S. Farley, Chairman, New Jersey Senate Committee Created to Investigate the Port Authority of New York and New Jersey

(000 Omitted)

Facility	Total Investment As of 12/31/73	Net Revenues Year 1973	Net Revenues Cumulative Amount	Net Revenues Cumulative Yrs. in Svc.	Years in Deficit Oper.
JFK Intnl. Airport	$ 663,729	$18,347	$171,089	27	7
LaGuardia Airport	178,473	6,740	22,393	27	13
Newark Intnl. Airport	347,532	(1,818)	(5,749)	26	18
Teterboro Airport	11,369	(232)	(9,272)	25	25
Heliports	721	(442)	(3,664)	20	20
Grain Terminals, Grain Elevators, & Columbia St. Pier	4,309	(110)	793	28	10
Port Newark	149,875	(1,205)	11,722	26	5
Erie Basin Piers	12,805	(708)	4,838	16	2
Hoboken Piers	18,113	(256)	3,792	21	6
Brooklyn Piers	95,944	(2,536)	(7,180)	18	15
Elizabeth	190,781	2,149	12,748	12	1
N.Y.C. Pass. Ship Term.	1,299	(604)	(744)	2	2
PA Building	—0—	765	16,290	41	21
N.Y. Truck Terminal	9,945	(262)	(9,940)	24	24
Newark Truck Terminal	8,225	(378)	(7,002)	24	23
P.A. Bus Terminal	60,618	(51)	5,386	24	14
Holland Tunnel	69,339	111	118,359	43	1
Lincoln Tunnel	199,325	(1,607)	5,458	37	20
Geo. Washington Bridge	213,469	17,431	267,000	43	8
Staten Island Bridges	65,606	6,341	48,585	46	22
PATH Corp.	221,026	(28,360)	(153,073)	12	12
World Trade Center	750,410	(16,460)	(36,058)	4	4
Total	$3,272,913	$(3,145)	$455,771		

NOTE: Parentheses denote deficits.

Exhibit C-15

FROM THE OFFICE OF THE GOVERNOR

FEBRUARY 10, 1975

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION
HERB WOLFE
MORAY EPSTEIN—X7212

Governor Brendan Byrne Monday reiterated his directive to the Port Authority of New York and New Jersey and the Department of Transportation to proceed with the proposal to extend Port Authority Trans-Hudson (PATH) service from Newark to Plainfield.

The Governor issued his instructions after reviewing reports from the Transportation Department and a Joint Task Force of staff of the Port Authority and the Transportation Department.

The reports considered the benefits and costs of improving mass transit service in the Newark-Plainfield corridor either by improving existing operations of the Central Railroad of New Jersey (CNJ) or by extending PATH service from Newark. The possibility of using part of the CNJ right of way for a roadway exclusively for buses was also considered.

The major issue to be resolved between the Department of Transportation and the Port of New York and New Jersey Authority is the financing of the local share of $69.4 million necessary to match the Federal fund application.

In its report, the Joint Task Force estimated that about $278 million in Federal assistance is needed for the PATH project, representing 80 percent of the estimated $347 million total project cost.

Exhibit C-15

This compares to $201.5 million requested in April 1974 by PATH in an application to the Urban Mass Transportation Administration (UMTA) for Federal aid on the basis of total project cost then estimated at $252 million. The cost difference largely is attributed to inflation.

The Governor said, "the economic analysis submitted by the task force indicates that the initial capital expenditure for a PATH extension will be much higher than the initial capital expenditure for simply upgrading and improving the CNJ.

"On the other hand, the analysis also shows that the cost per trip results in an operating cost which is much more favorable for the PATH Extension proposal than for improvement of CNJ service," the Governor pointed out.

"Our operating subsidy program," the Governor continued, "will reach the $72 million level this fiscal year. Minimizing this drain on State and Federal resources is a matter of high priority."

He described the PATH project as "an example where an investment in capital improvements can result in more efficient and less costly operations and maintenance."

Byrne pointed out that the PATH project conforms to his "long standing commitment to insure that the Port Authority of New York and New Jersey fulfills its obligation to provide mass transit facilities for New Jersey by using its own resources to fund public transportation.

He said repeal of the covenant restricting the Port Authority's involvement in public transportation had made the Port Authority "capable of fulfilling its original mandate — to plan and develop a transportation system which contributes to the economic well being of the port district."

"The need for the Port Authority, with its considerable wealth, to contribute to the creation and operation of a

Exhibit C-15

public transportation system and to the reduction of problems stemming from energy shortages and air pollution has long been apparent," said the Governor. He also indicated that the PATH project was only one aspect of the commitment to public transportation which he would expect of the Port Authority.

The Joint Task Force report, which Byrne said "clearly shows the expensive and complex nature of any major rail project in this corridor", stems from a series of meetings in August and September 1974. Those meetings resulted in a request by UMTA for the Port Authority and the Transportation Department to re-evaluate the PATH Extension proposal.

The Governor previously instructed Port Authority and Transportation Department officials to proceed with the PATH project in a meeting last January 15, as the Joint Task Force report was nearing completion.

The Governor also referred to a letter from Transportation Commissioner Alan Sagner replying to UMTA's request. The letter indicated that from a narrow and immediate budgetary perspective, simple upgrading of the existing CNJ commuter service is "cheaper."

However, it notes that, "from the viewpoint of a broader economic analysis, the extension of PATH to Plainfield has other advantages," such as:

— The service will provide a link among five of New Jersey's principal center cities—Newark, Jersey City, Elizabeth, Hoboken and Plainfield—in a manner consistent with the State's policy to sustain and redevelop the State's older cities.

— The PATH project provides for access to Newark Airport.

Exhibit C-15

— The PATH Extension will essentially for the first time provide *intra*state rapid transit service in New Jersey in a highly developed urban corridor at a time when added transit capacity is made increasingly essential by fuel shortages.

The Governor stated that while it was difficult to assign dollars and cents values to these advantages, they "represent the very factors which do and should differentiate a public sector investment decision from one made by the private sector."

The Task Force was co-chaired by Manuel Carballo, Deputy Commissioner of the Department of Transportation, and Louis J. Gambaccini, Director of Rail Transportation of the Port Authority. Staff members of both agencies carried out the technical work.

The request for re-evaluation by UMTA was based on three principal factors:

— The possibilities of purchase of CNJ right of way by the State, thus opening the question of whether an upgrading of CNJ commuter service represented a viable alternative;

— The desire on the part of UMTA to examine the most cost-effective solution in this corridor; and

— The relationship of any alternative in this corridor to the State's total mass transportation program from the point of view of relative priorities of major new transit programs.

The primary mission of the Task Force was to identify the various alternative plans and compare them on the basis of economic and non-economic criteria. Due to sharp

Exhibit C-15

escalation of construction costs and overall inflation, the economics of all alternatives were re-evaluated to reflect present and projected capital costs and future operating results. Selected non-economic factors which were compared and evaluated included service frequency, convenience and comfort, travel time and environmental impact.

As a result of this intensive review of the range of alternatives, five plans were finally selected by the Task Force for detailed consideration. They are:

1. PATH Extension to Plainfield via Newark Airport and Elizabeth. (Proposed in UMTA application April 1974)
2. CNJ expanded and modernized diesel service from Newark to Plainfield via Aldene.
3. CNJ electrification from Newark to Plainfield via Aldene. (Proposed in Transportation Department's 1968 Master Plan.)
4. CNJ diesel service on the mainline via Aldene with minimal upgrading to assure continued, reliable and safe rail service.
5. Development of a Busway on the two northerly tracks of the CNJ from Elizabeth to Plainfield with access provided to the Busway at both ends by local streets and major highways.

Under each alternate, the Task Force investigated the capital costs, operating costs, potential funding and operating and service factors involved to include a commuter service to both Plainfield and Raritan.

The Task Force also reconsidered the basic question of the need for rail access to Newark International Airport,

Exhibit C-15

a prime feature of the PATH Extension alternative.

The two CNJ rail alternatives, diesel and electrification, would not themselves provide a rail access to the airport, since both plans would utilize the existing CNJ alignment (north and west of the airport) via the Lehigh Valley Aldene route to serve the Plainfield Corridor. In that case, an express bus service could be provided between the two railroad stations in Newark and the airport. The CNJ Busway alternative would provide a bus service to the airport.

In the course of the Task Force studies, a detailed analysis was made of present traffic volumes and distribution of passengers utilizing the airport and future projections of airport passage.

Several rail alternative services to and from Newark Airport which had been studied in past years were re-examined to obtain an updated picture of the capital cost and other factors involved in providing such services. The study concluded that an interim express bus service to Newark's Penn Central and Erie-Lackawanna Stations is the most prudent investment at this time, under current economic circumstances.

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Attachments: Joint Task Force Report
Letter to UMTA from Commissioner Sagner

Excerpt from Exhibit C-17

REVISION OF TOLL RATE SCHEDULE FOR VEHICULAR CROSSINGS

It was recalled that the Board, at its meeting on April 10, 1975 (appearing at pages 112 et seq. of the Official Minutes of that date), adopted an amendment to the resolution establishing tolls for the use of vehicular crossings.

After reviewing the Commissioners' April 10th modification of the toll rate schedule for vehicular crossings, the Governors met on April 18, 1975. As a result of communications with the Governors following that meeting, the Board has reconsidered its April 10th resolution and agreed upon amendments thereto authorizing the issuance of reduced rate passenger car 20-trip, 30-day ticket books to be sold for $20.00 and adjusting the tolls charged trucks to provide for a uniform increase of 50%. It is believed that these changes adhere to the basic policy of discouraging avoidable automobile usage and still producing additional revenues to facilitate the new mass transportation capital projects described in the April 10th resolution.

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Exhibit C-18

NEWS FROM
THE PORT AUTHORITY OF NY AND NJ
One World Trade Center, New York, N.Y. 10048

PUBLIC AFFAIRS DEPARTMENT
JOHN TILLMAN, DIRECTOR
FOR INFORMATION:
(212) 466-7777
(201) 622-6600 Ext. 7777

FOR IMMEDIATE RELEASE
April 10, 1975

New York, Apr. 10—To increase its ability to finance vital mass transit improvements, the Port Authority will increase tolls by 50 per cent for all vehicles except buses at its six tunnels and bridges, and eliminate the sale of passenger car reduced rate tickets. The changes will go into effect on May 5.

At the same time, as an incentive to the formation of carpools where public transit is not reasonably available, the Port Authority will institute a 66⅔ per cent discount from the new rate for passenger automobiles occupied by three or more persons.

The new cash fare for automobiles will be $1.50 per round trip. The new carpool rate will be $.50 per round trip.

To further encourage the use of mass transportation, the existing bus round trip rate of $1.80 will remain unchanged.

Truck rates will be increased by approximately 50 per cent.

The new toll adjustments will apply at the George Washington Bridge, the Lincoln and Holland Tunnels, the Bayonne and Goethals Bridges, and Outerbridge Crossing.

Exhibit C-18

Announcement of the Port Authority's actions was made today by Chairman Willian J. Ronan, following a meeting of the Board of Commissioners.

Dr. Ronan said the new tolls schedules were further evidence of the Port Authority's deep commitment to mass transit. It is estimated that they will bring in $39 million in additional revenues annually. These funds are expected to be applied to the expansion of the Port Authority Bus Terminal; the extension of PATH to Plainfield via Newark International Airport; the rail access between Kennedy International Airport and Penn Station, Manhattan using Long Island Railroad tracks and high speed MTA cars; and direct rail service from New Jersey into Penn Station, Manhattan for certain trains on the Erie Lackawanna Railway.

The new toll structure is in line with efforts to reduce inefficient and unnecessary automobile usage, highway congestion, air pollution, and to conserve fuel.

It is no longer in the public interest to offer special inducements to motorists who choose to drive to work. On the contrary, there is general agreement on all levels of government that commuters should be encouraged to make maximum use of public transportation or to form carpools where public transit is not reasonably available.

A book of 60 carpool tickets will be valid for six months in addition to the month purchased. The book will be sold for $30, thereby providing a 66⅔ per cent discount from the $1.50 cash toll for automobiles. The carpool reduced rate tickets will be valid for use between 10 P.M. Sunday and 2 A.M. the following Saturday, except certain holidays, and are transferable between vehicles.

Passenger car reduced rate ticket books now outstanding —the 30-day, 20-trip books which sell for $10.00, and the

Exhibit C-18

two-year, 12-trip books, which sell for $9.60—will remain valid until the expiration date shown in the book.

The present automobile cash toll of $1.00 per round trip has been constant since each of the vehicular crossings was first opened to traffic, starting with the Holland Tunnel in 1927. The Port Authority has made available books of reduced rate automobile toll tickets for regular users of these crossings since 1950.

Excerpt from Exhibit C-19

[LETTERHEAD OF]
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

April 25, 1975

REGISTERED—RETURN RECEIPT REQUESTED

Port Authority of New York and New Jersey
One World Trade Center
New York, New York 10048

Gentlemen:

Enclosed are copies of two complaints filed with the Federal Highway Administrator by the Honorable Peter A. Peyser, Member of Congress, and by Mr. Stanley D. Ver Nooy, respectively, alleging that certain proposed increases in the tolls to be charged for transit over the George Washington Bridge, the Bayonne Bridge, the Goethals Bridge, and the Outerbridge Crossing, are unjust and unreasonable within the meaning of section 4 of the Bridge Act of 1906, 33 U.S.C. 494.

These copies of the complaints are sent to you pursuant to the Bridge Toll Procedural Rules, 49 CFR Part 310, a copy of which is enclosed for your convenience. Your attention is invited particularly to § 310.4, requiring a written response within 30 days, and enumerating nine points of information the response should contain.

Upon receipt of your response, or on the expiration of the 30-day response period, the Federal Highway Administrator intends to conduct an investigation as provided in § 310.5. In order to conduct an investigation of the requisite breadth and thoroughness, where four bridges are concerned, it seems necessary to perform it in two stages.

Excerpt from Exhibit C-19

The first, or overview, stage is now contemplated as covering the underlying law authorizing the construction or acquisition of the four bridges, and the charging of tolls thereon. It should also cover the position of the four bridges in your organizational and financial structure, the rights of bondholders, capital investment, and historical rates of depreciation and return on capital, as a minimum.

The second, or audit, stage would cover in detail, on a bridge-by-bridge basis, not only the matters disclosed by the overview stage but specific items of maintenance, operation, improvement, depreciation, revenues, and diversion, if any.

So that the investigation may begin the overview stage promptly, it is requested that you furnish, together with your formal § 310.4 response, a statement of how soon the overview team might visit your offices, and with whom they would meet, to develop the desired information.

Sincerely yours,

DAVID E. WELLS
Chief Counsel

Excerpt from Exhibit C-19

[LETTERHEAD OF THE]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES

April 16, 1975

The Honorable Norbert T. Tiemann, Administrator
Federal Highway Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Mr. Tiemann:

Last week the Port Authority of New York and New Jersey ordered a 50% increase in the toll rate for the bridges and tunnels under its jurisdiction. I believe that these increases are unjust and unreasonable.

Therefore, I am requesting you to exercise the authority vested in you, as Administrator of the Federal Highway Administration, pursuant to the Bridge Act of 1906, as amended (33 U.S.C. 494), to determine that such tolls are unreasonable and unjust, to prescribe what rates may be reasonable and just under the circumstances, and to order a compensatory repayment of any unjust rates which may be paid if the higher rates go into effect in the interim.

The full text of the complaint is attached.

Sincerely,

PETER A. PEYSER
Member of Congress

PAP:W:cj
Enclosure

Excerpt from Exhibit C-19

This complaint is brought pursuant to Title 49, C.F.R., Part 310.

I. Complainant is Peter A. Peyser, U.S. Representative from the twenty-third Congressional District in New York State. His district encompasses much of Westchester County and part of New York City. Many of his constituents, in addition to himself and his family, regularly use the bridges and tunnels of New York City, which will be subject to the proposed rate increase, and they will suffer an unjust and unreasonable financial hardship if this toll scheduled is approved:

II. The bridges affected are the George Washington Bridge, the Bayonne Bridge, the Goethals Bridge, and the Outerbridge Crossing. The George Washington Bridge is located at West 178th Street, crossing the Hudson River to Fort Lee, New Jersey; the Bayonne Bridge extends from Bayonne, N.J., crossing Kill Van Kull to Port Richmond, Staten Island; the Goethals Bridge extends from Elizabeth, N.J., crossing Arthur Kill to Holland Hook, Staten Island, and the Outerbridge Crossing extends from Perth Amboy, N.J., to Tottenville, Staten Island, New York.

III. The agency responsible for establishing and collecting the tolls is the Port Authority of New York and New Jersey, located at 1 World Trade Center, New York, New York 10048.

IV. The rates alleged to be unjust are as follows:

— $1.50 for passenger cars, which represents a 50% increase from the normal rate;

— $.75 for motorcycles, which also represents a 50% increase from the normal rate.

Excerpt from Exhibit C-19

V. Complainant believes that the rates are unreasonable and unjust for the following reasons:

1. The rate increase ordered by the Port Authority is in excess of that necessary to conduct its operations and to assure a fair and reasonable return on capital invested in the Port Authority operations. The 1974 annual report indicated that last year the operating revenues of the Port Authority rose to $156,116,000, a $19,000,000 increase over 1973, despite decreased use of the bridges and tunnels.

2. The rate increase will not result in a shift to mass transit.

(a) During the gasoline shortage last winter, it became acutely obvious that the great majority of those who do drive in passenger cars do so because there is no mass transit available to them, and those who do not car pool do not because car pooling is very impracticable, and in many cases is impossible. While there is no question that car pooling should be encouraged, this rate increase will not have the desired impact.

(b) The municipal governments in the metropolitan area have taken no action which would indicate that the area is sufficiently capable of affording adequate mass transportation for those who, because of the proposed rate increase, would be forced to utilize mass transportation. Again, there is no question that mass transportation should be encouraged and emphasis should be placed upon developing an adequate mass transportation network in the area. However, the

Excerpt from Exhibit C-19

proposed increase would not be that emphasis, but instead would be a form of regressive taxation.

(c) The municipal governments in the metropolitan area have taken no action to facilitate car pooling arrangements, in order to make car pooling workable and feasible. In the absence of such actions, it is unreasonable and unjust to impose financial hardship upon those who have no alternative but the private automobile for commuter transportation.

(d) The rate change will have sufficient adverse impact upon Northern Westchester County, which does not have sufficient mass transportation facilities. If the rate increase of the Port Authority is approved, it is certain that the New York State Thruway Authority will raise the toll on the Tappan Zee Bridge between Westchester and Rockland Counties $.50 to make it uniform with the toll on the George Washington Bridge. This will cause severe economic detriment to this area, and cannot result in a significant switch to mass transportation because there is no adequate system of mass transportation in the area.

(3) Commuters cannot afford a 50% increase in the cost of transportation.

The United States is currently in the midst of the deepest economic slump it has experienced since the Great Depression. Currently, the unemployment rate is 8.7%, meaning that 8,000,000 people are out of work. Inflation, although not as severe as last year, is currently running at an

Excerpt from Exhibit C-19

annual level of between 7% and 8%. Thus, the commuting worker is facing the worst economic picture that he has experienced in over 40 years.

The New York Metropolitan Area has been severly hit by this combination of recession and inflation. Workers in this area have seen their real incomes drop approximately 4% in the last year. A 50% increase in tolls for a daily commuter would be an added $125 cost annually for the average commuter, which would virtually eliminate the impact that the recently approved tax rebate would have.

(4) The impact of this will be severest on those who can least afford it.

The gasoline shortgage last winter made it very clear that those who could not car pool and who could not utilize mass transportation were low and middle income commuting workers. These workers do not have viable transportation alternatives, and do not have the economic leverage to sustain the 50% toll increase.

(5) The increase is inflationary.

The rate increase of $.50 is a 50% increase in a major budgetary item for many New York and New Jersey workers. Clearly this can only serve to fuel inflation and thwart real economic recovery in the area.

(6) The increase will drive business away from the New York Metropolitan Area.

Excerpt from Exhibit C-19

Businesses, already facing a depressed economy, will view this increase as a further incentive to move away from this area. Their workers will demand to be compensated for this cost of living increase. Those that cannot compensate their workers will face the loss of trained workers, or increased worker dissatisfaction over a situation beyond the control of management. Given the current economy, this can only be an incentive to move away from the area.

VI. Complainant has taken no prior action to obtain a change in the rates of toll alleged to be unreasonable and unjust, because no opportunities exist outside of the Federal Highway Administration for a hearing on this issue, and the probability that the Governor of either State will veto this rate hike is remote.

VII. The complainant prays that the Administrator determine that such tolls are unreasonable and unjust and disallow the increase; that the Administrator, if necessary, initiate formal adjudication to determine if any increase would be reasonable under the circumstances, and if a lesser increase would be reasonable, then to prescribe such a lesser increase; that in the event that the increase is determined unreasonable and unjust, the Administrator order a rollback of the increase, and that such rollback be compensatory; and the complainant prays for such other and further relief as the Administrator may deem just and proper.

PETER A. PEYSER

Excerpt from Exhibit C-19

April 15, 1975

Mr. Norbert T. Tiemann
Federal Highway Administrator
400 Seventh St., S.W.
Washington, D.C. 20591

Subject: Complaint against proposed highway bridge/tunnel tolls (interstate) by Port Authority of New York and New Jersey, effective May 5, 1975.

Dear Mr. Tiemann:

As provided in 49 CPR Part 310, as amended in the FEDERAL REGISTER of April 3, 1975, a complaint is hereby lodged by the undersigned private citizen against the subject proposed increase in interstate bridge/tunnel tolls.

(1) The nature of my interest in the reasonableness and justness of the toll schedules is that I am forced to use these facilities every working day to get to and from work. There are no alternative facilities, including mass transit facilities, available between my home in Bogota, N.J. and my office at Kennedy International Airport, Jamaica, N. Y., other than a combination of 6 subway trains and 4 buses (round trip) which would require a minimum of 4 to 5 hours' travel daily.

(2) Name and location of bridge/tunnel: George Washington Bridge, between Fort Lee, N.J. and New York, N.Y., Lincoln Tunnel, between Weehawken, N.J., and New York City; Goethals Bridge, between Bayonne, N.J. and Staten Island, N.Y.

(3) Name of agency responsible for tolls: Port Authority of New York and New Jersey, 1 World Trade Center, New York, N.Y. 10048.

Excerpt from Exhibit C-19

(4) Rates of tolls which are unreasonable and unjust:

Passenger cars: $1.50 per round trip, for vehicle with 1 or 2 occupants.
$0.50 per round trip, for vehicle with 3 or more occupants.

(5) Reasons for belief that the tolls are unjust and unreasonable:

a. They represent the following percentage increases over comparable tolls in effect today:

(i): Regular basic toll: 50%.

(ii): Toll applicable to computer traffic with 1 or 2 persons in car: 200%.

(iii): Toll applicable to vehicles making not more than 12 crossings in a period from 2 years and 1 day to 2 years and 364 days: 87.5%.

b. To the best of my knowledge and belief, the Authority has never made full public disclosure of the shares of its assets, liabilities, revenues and expenses allocated among its various facilities, including those at issue in this matter, so that no publicly available bases are available to make determination whether these tolls, and related return on investment, are fair and reasonable.

c. There has been no submission of economic data or information in support of these new rates.

d. There has been no submission of estimates of the cost of providing service via these facilities, with supporting details and references to sources.

e. There has been no detailed explanation of the basis for estimates of the aggregate effect of the new rates on the Authority's revenues and traffic volume.

Excerpt from Exhibit C-19

f. There is no undertaking on the part of the Authority that the additional revenues will be applied to the improvement of these facilities. Indeed, the Authority has stated that the additional revenues will be used for improvement of other facilities; not the facilities being used as a base for the additional revenues. Furthermore, there is no assurance that the additional funds will not be used to underwrite the losses known to be currently incurred by the operation of the Authority's World Trade Center—an enterprise entirely unrelated to the operation of these bridges and tunnels, and of no concern to those using these facilities.

(6) In light of the foregoing, relief from the imposition of the above tolls is urgently sought, and that the following toll structure for passenger automobiles be substituted:

a. 50¢ round trip for commuters' cars, with no minimum occupancy requirement; 20-trip books freely transferable from one holder to another, and an expiration date of 20 days from date of issue.

b. 75¢ round trip for casual users; 20-trip books freely transferable from one holder to another, and an expiration date of December 31 of the second year following date of issue.

c. $1.00 round trip for other users.

A copy of your transmission of the above to the Authority under 310.4 will be appreciated, as well as a copy of their response.

Cordially,

STANLEY D. VER NOOY

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Excerpt from Exhibit C-20

MODIFICATION OF TOLL RATE SCHEDULE
FOR VEHICULAR CROSSINGS

It was reported to the Board that the automobile cash toll of $1 per round trip has been constant since each of the vehicular crossings was first opened to traffic, starting with the Holland Tunnel in 1927. Since 1950, motorists making frequent use of crossings have been able to purchase books of passenger automobile reduced rate tickets. One book provides 20 tickets good for 35 days at 50% discount from the $1 cash toll, and the other provides 12 tickets, good for two years, at a 20% discount. Such reduced rates were instituted at a time when there was unused capacity at Port Authority crossings and toll revenues were rising steadily. However, in recent years toll revenues from Port Authority crossings have not kept pace with the rising costs of capital improvements and operating expenses with the result that the existing toll structure no longer provides adequate revenues to the Port Authority. Furthermore, additional revenues guaranteed by toll adjustments will facilitate the Port Authority's ability to continue to operate and to improve the present PATH system, the Port Authority Bus Terminal and to proceed with its required expansion by 50% of its present capacity and to continue its work on the effectuation of the extension of PATH to Plainfield, New Jersey, the Kennedy International Airport rail service project and the project for providing additional direct rail service to Penn Station, New York for New Jersey commuters. It should be noted as well that the PATH deficit has risen from $5 million annually to $33 million annually in 1974. It is necessary for the Authority as a self-supporting agency, particularly since its role in mass transportation has been expanding,

Excerpt from Exhibit C-20

to adjust the toll structure so as to continue its ability to maintain and finance its facilities and to maintain the sound financial standing of the Authority and its obligations.

Furthermore, in recent years, Federal, state and local governments have sought to reduce inefficient and unnecessary automobile usage because of concerns over highway congestion, deteriorating public transit facilities, air pollution, and most recently, the need to conserve fuel. To this end, public agencies, including the Port Authority, are underwriting substantial subsidies to foster public transportation. It is no longer in the public interest to offer special inducements to individual motorists who choose to drive to work. There is general agreement on all levels of government that commuters should be encouraged to make maximum use of public transportation or to form carpools where public transit is not reasonably available. There is also general agreement in light of energy and environmental considerations to discourage avoidable automobile usage. At the same time the continued operation and development of mass transportation facilities is universally recognized as a key component of programs to ameliorate environmental and energy concerns.

To further encourage the use of mass transportation facilities there would be no increase in bus tolls.

In light of the foregoing, it was recommended that, effective May 5, 1975, passenger automobile tolls be increased by 50% and the sale of existing 50% and 20% reduced rate ticket books be discontinued. Nevertheless, reduced rate ticket books outstanding as of that date would continue to be honored until their expiration dates. It was further recommended that the classification of trucks be modified and the toll schedule applicable thereto be increased. It was also recommended that, effective May 5, 1975, a new

Excerpt from Exhibit C-20

reduced rate toll for carpools, available through the purchase of books of tickets, be instituted for passenger automobiles occupied by three or more persons providing a 66⅔% discount from the $1.50 automobile cash toll. To discourage purchase of tickets for the occasional leisure-oriented crossing and promote purchase for the frequent commute-to-work crossing, the carpool ticket book costing $30 will contain 60 tickets valid only for six months in addition to the month of purchase. The valid period will run from 10:00 p.m. on Sunday to 2:00 a.m. on Saturday which will also accommodate carpoolers on late night shifts. However, the carpool tickets will not be valid between 2:00 a.m. and 10:00 p.m. on the following six holidays: New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas, provided such holidays do not fall on a Monday or Friday. If the holiday immediately precedes or follows a Saturday-Sunday weekend, the ticket would not be valid from 2:00 a.m. on the first day of the combined holiday and weekend period until 10:00 p.m. on the last day of the period. The purchase of scrip at 10% discount, including truck scrip, will be continued under the new schedule.

The increase in the passenger automobile and truck tolls and the discontinuance of existing 50% and 20% discounts and provision of the reduced rate for carpools is estimated to produce an increase in revenues of approximately $39 million annually.

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Supreme Court of New Jersey

State's Supplemental Exhibits

ADMITTED INTO EVIDENCE
BY ORDER DATED
SEPTEMBER 2, 1975

State's Supplemental Exhibit A

BARR BROTHERS REPORT
(May or June 1975)

THE REPORTS OF MY DEATH ARE GREATLY EXAGGERATED
(With apologies to Mark Twain)

With the recent court decision concerning deeper involvement of the PORT OF NEW YORK AND NEW JERSEY AUTHORITY in Mass Transit, we thought that it might be appropriate to set some facts straight regarding the basic strengths of the Authority.

(1) Section 3 of the basic bond resolution requires that for a bond issue to be sold the prior year's earnings must equal 1.30 x maximum future debt service (including mandatory sinking fund requirements).

(2) Under Section 7 the Port Authority must certify that bonds issued for any additional facility will not "materially impair the sound credit standing of the Authority".

(3) While not required under the basic bond resolution, the Authority policy has been to maintain reserves equal to the next two years debt service.

(4) The General Reserve Fund is required to be maintained at 10% of outstanding bonded debt. At December

State's Supplemental Exhibit A

31, 1974, it stood at $173,487,000., the Consolidated Reserve Fund $46,800,000., and reserve funds in trust totaled $34,770,000., which together was more than the next two years debt service.

(5) At December 31, 1974

Total Assets of $3,912,295,000. included $3,477,000,000. in facilities, $262,877,000. in securities (mainly U.S. Treasury and U.S. Agency paper) and $90,812,000. in cash and time deposits.

Gross operating revenues were $410,000,000. with net available for debt service and reserves of $179,200,000.

Whether or not the Port Authority ever gets involved in Mass Transit, we feel it continues to be one of the finest revenue credits in the country, amply protected by the basic bond resolution, excellent management and some highly profitable and monopolistic facilities that can more than carry a reasonable amount of Mass Transit, particularly with the recent toll increases on the Hudson crossings providing additional revenues.

At these depressed levels, we feel these offerings present an outstanding and secure value for the investor.

Moody's Rating	S&P	Issue	Cpn.	Mat.	Price	Yield	Current Yield	Average Life Thru Operation Of The Mandatory Sinking Fund	Yield To Average Life
A	A	Port of New York & New Jersey Authority,	3.40	2/1/87	64	8.25	5.31	1983	10.287
A	A	Port of New York & New Jersey Authority,	3 1/4	4/1/93	52 1/4	8.50	6.24	1987	10.323
A	A	Port of New York & New Jersey Authority,	3 3/8	5/1/94	52 1/4	8.50	6.48	1988	10.05
A	A	Port of New York & New Jersey Authority,	3 1/2	6/1/96	51 1/2	8.50	6.80	1990	9.70
A	A	Port of New York & New Jersey Authority,	4	3/1/02	56	8.00	7.14	1993	9.00
A	A	Port of New York & New Jersey Authority,	6 5/8	8/1/05	83	8.14	7.98	1998	8.05
A	A	Port of New York & New Jersey Authority,	5.80	2/1/07	76	7.86	7.63	2000	8.05
A	A	Port of New York & New Jersey Authority,	5 1/2	10/1/08	72 1/2	7.83	7.58	2001	8.02

BARR BROTHERS & CO., INC.

State's Supplemental Exhibit B

DOCUMENTS RE REPEAL, PATH FARE INCREASE, ENERGY CRISIS, ETC.

(February 1974)

THE STAR-LEDGER

STAR-LEDGER PLAZA, NEWARK, N.J. 07101

Wednesday, February 13, 1974

BYRNE ASKS ICC DENIAL OF PATH FARE INCREASE

Gov. Brendan T. Byrne said yesterday deficits on the PATH rail line could be paid by the Port Authority of New York and New Jersey without a 20-cent fare increase being pushed on commuters by an "unveiled form of blackmail."

Byrne urged the Interstate Commerce Commission (ICC) to deny a petition by the P.A. for an increase of the present 30-cent fare to offset an anticipated $19.7 million operating deficit on the commuter line.

"The figures available to us at this time indicate that even after absorbing the projected loss of PATH, the Port Authority maintains sufficient surplus" to cover the bonds it has issued to finance its facilities, the Governor said in a statement.

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Alan Sagner, state transportation commissioner, read the statement in the second day of ICC hearings in Jersey City on the proposed fare increase on the 145,000 commuter PATH (Port Authority Trans-Hudson) rail line from Manhattan to northern New Jersey.

Sagner said the "implied threat" to abandon plans for a PATH extension to Plainfield, mandated by the Legisla-

State's Supplemental Exhibit B

tures of both states is "based on specious reasoning and appears to be an unveiled form of blackmail."

P.A. officials have said that a failure of the ICC to approve the fare increase could lead to abandonment of plans to extend PATH service to Plainfield via Newark International Airport.

Sagner said "in view of the present energy crisis," no action should be taken which would encourage commuters to switch to private transport from public facilities.

The P.A. had originally predicted it would lose 7½ per cent of the passengers on the PATH line due to the fare hike, but later revised the figure to 2 per cent.

Francis A. Mulhern, attorney for the Port Authority, said the commissioners of the bistate agency will consider Sagner's petition at their regular monthly meeting tomorrow.

Sagner said Byrne believes that the operation of the PATH line cannot be separated from running other Port Authority facilities, such as the Hudson River tunnels, three metropolitan airports, containerports and office buildings.

The fare increase has been postponed following protests of community leaders and politicians.

State's Supplemental Exhibit B

THE NEW YORK TIMES
WEDNESDAY, FEBRUARY 13, 1974

BYRNE ASSAILS BID FOR 50C PATH FARE

Port Agency, Under Attack, Agrees to Reconsider Its Request for Increase

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SPECIAL TO THE NEW YORK TIMES

JERSEY CITY, Feb. 12—Under sharp attack by Governor Byrne, commissioners of the Port Authority of New York and New Jersey agreed today to consider on Thursday whether to withdraw a request for an increase in PATH tube train fares from 30 to 50 cents.

Intervening in the Interstate Commerce Commission hearings here on the proposed fare increase, the Byrne administration denounced it as an "ill-timed request."

Alan Sagner, the State Transportation Commissioner, appeared for the Governor to deliver one of the sharpest rebukes in memory by a state administration against the bi-state authority.

He said that if the commissioners did not withdraw their petition the state would urge the I.C.C. administrative judge in charge of the hearings, Richard McG. Wilkins, to deny it.

In a statement read at the hearing, Mr. Sagner said that Port Authority actions had indicated "a failure to embrace its responsibility to transportation as a part of its mandate for the economical viability of the port area."

Wilson Critical

Governor Wilson of New York, in a brief comment in Albany, said that it would be "injudicious" to raise the

State's Supplemental Exhibit B

fare on the trans-Hudson tube lines above the 35-cent level of the New York City subways.

Each Governor has veto power over actions of the 12 Port Authority commissioners.

On learning of Governor Byrne's toughly worded intervention, one of the commissioners, Jerry Finkelstein of New York, commented: "That certainly lays it low."

Mr. Finkelstein favors a 35-cent PATH fare.

Kenneth S. Levy, deputy attorney general, represented the state in its formal intervention in the proceedings today. Francis A. Mulhern, the port agency's deputy general counsel, then asked for and got permission from Judge Wilkins to continue the hearings today and tomorrow at Jersey City and Thursday and Friday at Newark or until the commissioners have had time to review the Governor's statement at their Thursday meeting.

Commissioner Sagner detailed the following reasons why his department opposed a fare increase.

No action should be taken during the energy crisis to divert traffic from public transportation.

The argument of a deficit in PATH operations ignores the surpluses in other Port Authority operations that could make up the loss.

There may be help from Washington.

The Port Authority's "implied threat" to abandon plans for the PATH extension from Newark to Plainfield is "an unveiled form of blackmail."

PATH carries about 135,000 riders daily between Manhattan and Newark, Jersey City, Hoboken and Harrison, N.J.

State's Supplemental Exhibit B

DAILY NEWS

THURSDAY, FEBRUARY 14, 1974

KHEEL RAILS AT PATH, ASKS RESIGNATIONS

BY DAVID HARDY

Opposition to the 20-cent fare hike proposed by the Port Authority Trans Hudson (PATH) heated up even more yesterday as New York lawyer Theodore (Ted) Kheel, a long-time critic of the bistate agency, called for the resignation of the authority commissioners for "defying the wishes" of New Jersey Gov. Byrne and New York Gov. Wilson.

Byrne and Wilson—both of whom have veto power over the decisions of the commissioners—have already expressed strong opposition to the proposed fare hike from 30 to 50 cents.

"The commissioners, as honorable men, have no choice but to resign," said Kheel in a statement from his Manhattan law office. "If they are honorable men I call on the two governors to ask them to resign."

Andrew C. Axtell, one of three Port Authority commissioners from New Jersey, blasted Kheel's remarks.

"I feel Mr. Kheel talks out of both sides of his mouth. He tells us (the commissioners) one thing and then tells the newspapers something else," Axtell said.

See 27M Deficit

Axtell said he is still firmly in favor of the fare hike which the PA has stated is necessary to meet an estimated $27.4 million operating deficit on its rail lines.

State's Supplemental Exhibit B

"I believe we should continue with the hearings," Axtell said, "and let the ICC (Interstate Commerce Commission) decide whether there should be an increase."

Once the ICC renders a decision, Axtell said, the commissioners would meet "to reassess the financial picture and if after that Gov. Byrne is still opposed to the increase, I will abide by his wishes. The governor has the final word."

State's Supplemental Exhibit B

THE STAR-LEDGER
STAR-LEDGER PLAZA, NEWARK, N.J. 07101
Friday, February 15, 1974

P.A. CALLS OFF ITS REQUEST FOR A PATH HIKE

BY LEONARD J. FISHER

NEW YORK—The Port Authority of New York and New Jersey yesterday withdrew its request for a fare increase to 50 cents on the Port Authority Trans-Hudson (PATH) commuter train system.

The move came two days after Gov. Brendan T. Byrne voiced strong opposition to the proposed 20-cent increase.

New Jersey Transportation Commissioner, Alan Sagner, who aired Byrne's criticism of the proposal at Tuesday's Interstate Commerce Commission (ICC) hearing in Jersey City, was at yesterday's Port Authority meeting as the 10 commissioners attending the session voted unanimously to withdraw the fare increase request from ICC consideration.

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Two P.A. commissioners did not attend the meeting.

"I'm sure the Governor will be as pleased as I am at this decision," said Sagner. Byrne has promised to appoint Sagner to the Port Authority as soon as there is a vacancy.

State's Supplemental Exhibit B

Philip B. Hofmann, a P.A. commissioner from New Jersey, emphasized that it was at Byrne's request the action was taken. He made that clear after P.A. General Counsel Patrick Falvey read the rescinding resolution to the commissioners.

The resolution Falvey read said the PATH fare increase authorized by the P.A. in June, 1973 should be rescinded because the energy crisis is encouraging, rather than discouraging, riders of mass transit, and also because the governors of both New Jersey and New York had expressed their desires to avoid such an increase.

Hofmann quickly pointed out to Falvey that his one-page resolution could be shorter and more precise.

"Governor Byrne doesn't want it, and the commissioners are following his wishes," declared Hofmann, asserting it took only one sentence to describe what the commissioners did yesterday.

"Governor (Malcolm) Wilson (of New York) has said he thought it would be injudicious to have the fare raised above 35 cents (the New York subway fare)", responded Falvey.

"We didn't hear about that at our (executive session) meeting," Hofmann returned.

Later, when the P.A. meeting was officially over, Hofmann, who along with the other five New Jersey commissioners favored the proposed PATH fare increase, told newsmen:

"The Governor (Byrne) asked us to withdraw it, and he's the boss. It took one-tenth of a second, and I made

State's Supplemental Exhibit B

the motion. He's the boss. If that's what he wants, that's what he's entitled to."

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Hofmann added that his position on the proposed fare increase and its connection to the P.A.'s proposed $221 million extension of PATH lines to Newark International Airport and Plainfield had been misunderstood if state officials believe he was threatening to scrap the proposed extension if the fare increase was not approved.

The commissioner said it was not a threat, but merely the fact that he opposes the extension without the fare increase.

Sagner had testified Tuesday in Jersey City before the ICC that "the implied threat to abandon plans for the PATH extension from Newark to Plainfield is based on specious reasoning and it appears to be an unveiled form of blackmail."

"Any position concerning fares on the present PATH facility should have no bearing on the PATH extension," said Sagner.

• • •

On Wednesday, Sen. Harrison A. Williams Jr. (D-N.J.), joined Byrne in opposing the 20-cent fare increase.

The third hearing on the proposed fare increase before the ICC, which must approve any hike, was held in Newark yesterday before the Port Authority withdrew its request.

State's Supplemental Exhibit B

A P.A. spokesman said last night's scheduled continuance of the hearing was canceled in the wake of that action.

At the Newark hearing, conducted in the Essex County Courthouse, opponents of the fare increase contended that PATH cannot be divorced from other Port Authority operations, and that the agency is more than able to make up the PATH deficit.

"The economic realities are that the Port Authority is a thriving and healthy organization," said Newark Mayor Kenneth A. Gibson in a statement read by an aide.

Opponents also contended that if the PATH fare went up, not only would the interstate railway lose passengers, but rail and bus feeder lines operated by the Erie Lackawanna Railway, the Central Railroad of New Jersey, Transport of New Jersey and smaller bus companies, would suffer as well, since most PATH riders use several mass transit systems in conjunction with PATH.

Port Authority figures show that last month 120,000 fares were collected on the PATH system. The P.A. had sought a fare increase because of the large deficit in the PATH lines which the authority agreed to take over in 1962 in exchange for never again having to operate another deficit mass transit line in the Metropolitan area.

However, Byrne has said legislation will be introduced in Trenton today to eliminate that blockade to the authority's running mass transit services in North Jersey. He pointed out that most mass transit operations are in the red.

State's Supplemental Exhibit B

A P.A. spokesman said yesterday the PATH deficit for 1974, without a fare increase, had been projected at $27 million. The deficit was slightly more than $20 million in 1972. No figure has been released on last year's deficit. The authority has absorbed $102 million in deficits from 1962 to 1972, the spokesman noted.

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State's Supplemental Exhibit B

DAILY NEWS
FEBRUARY 15, 1974

PA BOWS TO 2 GOVERNORS, WITHDRAWS FARE-HIKE BID

BY DAVID HARDY

Bowing to pressure from New Jersey Gov. Byrne and New York Gov. Wilson, the Port Authority's 12 commissioners voted yesterday to withdraw their controversial proposal for a 20-cent fare hike on the Port Authority Trans-Hudson (PATH) rail line.

Commission Chairman James C. Kellogg of New Jersey announced the decision to withdraw the proposed fare hike from 30 to 50 cents, citing the current energy crisis as well as the opposition of the governors.

Governors Are Pleased

In a resolution read by PA General Counsel Patrick J. Falvey after their meeting at the PA's World Trade Center headquarters in Manhattan, the commissioners said they were withdrawing the requested increase because "the energy crisis had given impetus to the effort to encourage greater use of public transportation rather than the auto."

The resolution also said the commissioners were reversing themselves because the proposal was not in accord "with the expressed desires of the governors to avoid increasing the fares."

Byrne, in a statement from his Trenton office said "we are pleased that the Port Authority acceded to the wishes of the governors of New York and New Jersey and we anticipate similar cooperation in the future."

The proposed increases—which has been the subject of Interstate Commerce Commission hearings in New Jersey

State's Supplemental Exhibit B

since Monday—has drawn vigorous opposition from many of PATH's estimated 20,000 daily riders as well as from a wide range of environmental and consumer groups.

In recent days, the opposition has reached such a pitch that New York attorney Theodore Kheel, the constant critic of the PA, called for the resignation of the commissioners for "defying the wishes" of the governors of New York and New Jersey.

'Form of Blackmail'

Byrne, who with Wilson has veto power over the decisions of the commissioners had strongly opposed the fare boost and accused the PA of using "an unveiled form of blackmail" by threatening to curb plans for expansion unless the hike was granted.

The commissioners made the request for a fare hike last year, emphasizing that the 67% increase was necessary to meet the 27.4 million operating deficit this year.

He Dampens Extensions

At yesterday's meeting, Commissioner Phillip Hofmann of New Jersey said flatly that the action was being taken "in response to Gov. Byrne." However, Hofmann also said that in view of the commission action, he could not favor going ahead with a $650 million project to construct PATH extensions to Plainfield and to Newark and Kennedy airports.

But New Jersey State Transportation Commissioner Alan Sagner, who was also present at the commission meeting, told newsmen he didn't think the extension was in jeopardy.

Despite the commission action, Kheel, who was reached in Miami, said the commissioners' "total lack of under-

State's Supplemental Exhibit B

standing of the real problems of transportation can justify only one conclusion: They must resign."

FARE ADJUSTMENT—RESCISSION

It was recalled that the Committee on Operations, at its meeting on June 7, 1973, revised the PATH tariff to increase the fare from 30 cents to 50 cents.

The tariff is presently pending before the Interstate Commerce Commission.

In the meantime, the energy crisis has given increased impetus to the efforts to encourage the use of public transportation facilities rather than the private automobile. The Governors of both States have expressed their desire to avoid, to the maximum extent possible, increasing the fares on mass transportation facilities, particularly subway and commuter rail facilities.

There has also emerged federal and local policies designed to discourage commutation by automobile to and from metropolitan business centers.

It does not appear, therefore that at this time an increase in the PATH fare from 30 cents to 50 cents will be in accord with such policies and with the federal, state and local efforts to cope with the energy crisis.

It was therefore recommended that the amendment to the PATH tariff adopted June 7, 1973 be and it is hereby rescinded.

Approved.

Whereupon, the meeting was adjourned.

Vice-President/General Manager

State's Supplemental Exhibit C

PORT AUTHORITY PRESS RELEASE
(April 21, 1975)

NEWS FROM
THE PORT AUTHORITY
OF NY & NJ
One World Trade Center
New York, N. Y. 10048

PUBLIC AFFAIRS DEPARTMENT
John Tillman, Director
For Information:
(212) 466-7777
(201) 622-6600 Ext. 7777

FOR IMMEDIATE RELEASE
April 21, 1975

At a special meeting today, the Board of Commissioners of The Port Authority of New York and New Jersey, in accordance with the agreement reached with Governor Carey of New York and Governor Byrne of New Jersey, revised the recently announced increased tolls schedule for its six tunnels and bridges by continuing commuter tickets for passenger cars, but at double the present rate. The previous toll schedule, by eliminating the commuter tickets, had tripled its rate.

Dr. William J. Ronan, Chairman of the Port Authority, said: "We are pleased that this compromise agreement has been achieved. We appreciate the support of Governor Carey and Governor Byrne in this historic revision of the Port Authority revenues to make possible new mass transit projects:

—The expansion of the midtown Port Authority Bus Terminal;

—The extension of PATH to Plainfield via Newark International Airport;

—The rail access between Kennedy International Airport and Penn Station, Manhattan using Long Island Railroad tracks and high-speed MTA cars; and

—Direct rail service from New Jersey into Penn Station, Manhattan for certain trains on the Erie Lackawanna Railroad.

"The new toll structure, with its encouragement of carpools reflects the general agreement at all levels of government that commuters should be encouraged to make maximum use of public transportation or to form carpools when public transit is not available.

"The minutes of the April 10 meeting have been amended by agreement with the two Governors and the new tolls schedule will become effective May 5."

The revision leaves unchanged the Port Authority's incentive to the formation of carpools. A 66-⅔ per cent discount from the new $1.50 rate will apply to passenger autos carrying three or more passengers, making the carpool rates only $.50 for a round trip. A book of 60 carpool tickets, good for six months, will be sold for $30.00. These carpool tickets will be valid between 10 P.M. Sunday and 2 A.M. the following Saturday, except certain holidays, and are transferable between vehicles.

To encourage the increased use of mass transportation, the existing bus round-trip rate will remain unchanged.

The new cash fare for automobiles will be $1.50 per round trip as originally proposed.

Truck rates will be increased by 50 per cent, with the retention of the 10 per cent scrip discount.

The original package, with elimination of commuter discounts, would have yielded some $39 million. The revised schedule will yield about $33.6 million. This total will approximate the Port Authority share of the cost of providing the capital funds for its four new mass transit projects. The reduction in revenue from the original $39 million eliminates a contingency provision of about $5 million for changes in construction costs, interest rates, and construction schedules.

All reduced rate ticket books now outstanding will remain valid until the expiration date printed on the book.

Supreme Court of New Jersey

Plaintiff's Supplemental Exhibits

ADMITTED INTO EVIDENCE
BY ORDER DATED
SEPTEMBER 2, 1975

Plaintiff's Supplemental Exhibit A

AFFIDAVIT OF LESTER J. MURPHY, JR.

SUPREME COURT OF NEW JERSEY

Docket No. 11498

September Term 1974

UNITED STATES TRUST COMPANY OF NEW YORK, ETC.
Plaintiff-Appellant,

—against—

THE STATE OF NEW JERSEY, *et al.*,
Defendants-Respondents.

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LESTER V. MURPHY, being duly sworn, says:

1. I am a Vice President of Barr Brothers & Co., Inc., 40 Wall Street, New York, New York. Barr Brothers is a bond trading firm involved in underwriting municipal bond issues and is also a large dealer in municipal bonds in the secondary market, maintaining daily trading positions ranging from $5,000,000 to $18,000,000. I have worked with Barr Brothers in the field of municipal bond trading for 25 years, first as a trainee, then as a junior trader, then in the area of institutional sales, and since 1961, I have been responsible for the trading positions adopted by the firm in dollar bonds and for managing the accounts of institu-

Plaintiff's Supplemental Exhibit A

tional investors. My responsibilities require that I keep informed of the conditions of the bond market in general. In this connection, I have daily contact with representatives of banks, trust companies and other institutional investors as well as with other major municipal bond dealers and large stock exchange firms.

2. I have read and am familiar with the special report issued by Barr Brothers entitled the "Port of New York and New Jersey Authority In Mass Transit." I make this affidavit to refute any implication that this report represents a position by Barr Brothers regarding the effect of the retroactive repeal of the 1962 Covenant on the secondary market for Port Authority Consolidated Bonds contrary to my testimony in *United States Trust Company of New York* vs. *State of New Jersey et al.* before the Superior Court, Bergen County, New Jersey, on February 5, 1975. I was presented at trial as an expert in the operation of the secondary market for municipal bonds.

3. Barr Brothers' special report was prepared in May, 1975, shortly following the Superior Court's decision on May 14 upholding the retroactive repeal of the 1962 Statutory Covenant between the States of New Jersey and New York and with holders of Consolidated Bonds of the Port Authority.

4. The Superior Court's decision had a further serious adverse effect on the secondary market for Consolidated Bonds of the Port Authority. As a major holder of, and dealer in, Consolidated Bonds of the Port Authority Barr Brothers issued the Special Report in an attempt to support the market for such Consolidated Bonds and to calm, to the extent possible, investor concern regarding the present credit worthiness of the Port Authority. This investor

Plaintiff's Supplemental Exhibit A

concern has been and continues to be reflected in the "depressed levels" referred to in the Report. Such "depressed levels" were caused by and have prevailed since the retroactive repeal of the 1962 Covenant by the States of New Jersey and New York in April and June, 1974.

5. Barr Brothers' effort to support and improve the market for Port Authority Consolidated Bonds had very limited and short-lived success because institutional investors continue to be unwilling to purchase Port Authority Consolidated Bonds given the possibility of substantial involvement of the Port Authority in deficit rail mass transit operations.

6. I have reviewed the transcript of my testimony on February 5, 1975 and can repeat and reaffirm my testimony in general and the following aspects of my testimony in particular:

(a) Since the retroactive repeal of the 1962 Covenant in 1974 institutional investors who formerly were principal purchasers of Port Authority Bonds no longer consider such bonds an acceptable investment. After the repeal of the 1962 Covenant, and continuing to date, I know of no large institutional investors who are purchasing Port Authority Consolidated Bonds with one exception in a very limited amount.

(b) Since the retroactive repeal of the 1962 Covenant, the secondary market for Port Authority Consolidated Bonds has been extremely thin and sensitive since large investors are no longer willing to purchase such bonds. Since the prevailing bid prices would be severely depressed by a large offering of bonds, large investors have not offered blocks of

Plaintiff's Supplemental Exhibit A

Port Authority Bonds as they did in the past because of the market's thinness and sensitivity.

(c) Since the retroactive repeal of the 1962 Covenant, and continuing to date, investors have been unwilling to "swap" other bonds formerly considered comparable in quality and in intrinsic security for Port Authority Bonds because the investor is no longer satisfied with the security standing behind Port Authority Consolidated Bonds.

LESTER V. MURPHY, JR.

Sworn to before me this
27th day of June, 1975.

JUNE H. VENERY

Notary Public
JUNE H. VENERY
Notary Public, State of New York
No. 24-4003560
Qualified in Kings County
Commission Expires March 30, 1977

Plaintiff's Supplemental Exhibit B

NEWSPAPER ARTICLES EXPLAINING CONVERGENCE OF MASS PORT AND PORT AUTHORITY BONDS

THE BOSTON GLOBE
Thursday, March 20, 1975

BANK WOULD SUE A DUKAKIS MASSPORT

BY RACHELLE PATTERSON
Globe Staff

The New England Merchants Bank, trustee for the holders of $300 million worth of Massachusetts Port Authority bonds, yesterday said the move to reorganize the Authority by Gov. Michael S. Dukakis would "politicize" the agency. The bank threatened court action and placement of the Authority in receivership if a bill filed by the governor becomes law.

Mark C. Wheeler, chairman of the bank, said at a legislative hearing: "The Trustees' duty to protect the Authority's bondholders leaves it little choice but to challenge the bill in the courts and to seek damages in the amount of $310 million, plus interest and redemption premiums."

Wheeler said that the proposal by Dukakis to replace the present seven-member, policy-making board with a single administrator responsible to the governor and a four-member advisory board would amount to a "breach" of the Authority's contract with the bondholders. This breach, he said, entitles the bank to seek court action, "including, if necessary, petitioning for a receiver and demanding full payment of the outstanding amounts owed to the bondholders."

Frederick Salvucci, Massachusetts secretary of transportation said however that the governor's plan would not impair the obligations of the Authority's bonds. He said there is no provision in the trust agreement to prevent any reorganization.

Plaintiff's Supplemental Exhibit B

A major conflict between the banking and business community and Dukakis has developed over control of the Port Authority which could have long-range financial implications for future Authority revenue bonds.

What started out as a desire by the majority of the Authority's board to remove Edward J. King from his executive director's post in order to bring the independent agency, more in line with overall state planning has backfired and is resulting in a battle to remove the policy-making board altogether.

Legislation submitted by the governor to abolish the board and replace it with a single administrator responsible to him and a four-member advisory panel was heard yesterday before the Legislature's Committee on State Administration. The proposal will be discussed by the committee in a public executive session on Monday.

On the one hand, Wheeler argued that the legislation can "only aggravate the Authority's difficulties by making it totally subservient to political considerations and risk ultimate destruction of the Authority's usefulness to the Commonwealth."

On the other side of the issue, Salvucci contends that there is more stability in the establishment of a strong administrator who would serve the same term as the governor and be completely responsible to him.

Others involved in the controversy are the Port Authority board members, three of whom testified yesterday that they wanted to continue the current independent structure, and legislators who still feel bitter about the firing of King last November and want the present members of the board removed.

The move by the governor to assume control over the Port Authority comes at a time when the agency is making plans to develop the seaport which would involve

Plaintiff's Supplemental Exhibit B

borrowing additional funds. It also comes at a time when tremors are still being felt in the bonding market about all Authority bonds as a result of the recent default of New York's Urban Development Corp., the country's largest public housing developer.

After three hours of testimony, Sen. Alan Sisitsky (D-Springfield), chairman of the State Administration Committee, said: "I support the governor's proposal, but it is likely there will have to be significant modifications in order to achieve a board consensus. The board will probably have more authority than suggested by the governor."

Sisitsky said that if the legislation's constitutionality is challenged and the bank wins, then the state will have to make some dramatic adjustment in the law.

"If the Legislature passes the governor's bill and the legislation is upheld by the courts, then the banks can at the time of any future offerings demand higher interest rates because they can claim a lack of confidence in the new structure," he said.

The present non-paid board makes all decisions of the Port Authority, which controls Logan Airport, the Tobin-Mystic River Bridge, the seaport, and part of the civilian operations at Hanscom Field in Bedford. The members are appointed by the governor for seven-year staggered terms. The executive director, under the current procedure, carries out the decisions of the board. King was paid $58,500 a year.

Chairman of the Port Authority, J. Alan Fay, urged the committee to "give us a chance to meet the challenge before us." He said the authority now given to the board should continue.

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THE BOSTON GLOBE
TUESDAY, MARCH 25, 1975

MASSPORT COMPROMISE BILL LETS DUKAKIS NAME BOARD

BY RACHELLE PATTERSON
Globe Staff

Gov. Michael S. Dukakis will be able to appoint a single administrator and five members of an advisory board under a bill reorganizing the Massachusetts Port Authority approved by the Legislature's Committee on State Administration yesterday.

The bill, a compromise version, gives Dukakis the appointing power he sought to better control the authority, but the five-member board would have staggered five-year terms.

Dukakis wanted both the board and the administrator to serve coterminous with him. The new version also strengthens the board by giving it approval power on key issues, including revenue bonds, tolls on the Mystic-Tobin Bridge, buying property and issuing contracts.

Mindful of a warning issued last week by the New England Merchants National Bank, trustee for the holders of $300 million in Port Authority bonds, Sen. Alan Sisitsky (D-Springfield), chairman of the State Administration Committee, said the bill is regarded as "litigation-proof."

Secretary of Transportation Frederick P. Salvucci, meanwhile, said he hopes to get Dukakis's reaction today at the weekly cabinet meeting. He said the governor "strongly wanted a coterminous board," but that the measure was "a step in the right direction."

The bill will move to the House and Senate for action. Amendments can be made to the measure reported out of

the committee on the floor of either branch.

Gordon Silver, an attorney with the law firm of Choate, Hall and Stewart, which represents Merchants Bank, attended yesterday's session and expressed surprise at the quick action by the committee with no further input from the bank.

Silver said the bill approved by the committee will be "carefully examined by the bank in light of the trustees' concern and feelings."

At a public hearing last week, Mark C. Wheeler, chairman of the bank, threatened the Port Authority with court action and receivership because the move by Dukakis was interpreted by Wheeler as an attempt to "politicize" the authority.

Silver said, that in his opinion, the staggered terms, ranging from one year to five years, made it "less political" but that such reorganization creates a "dangerous precedent." He said: "What is there to stop future governors from changing the structure to suit them?"

The committee's version sets the administrator's salary at $45,000 annually, as requested by the governor. If the administrator wants more money, he would have to petition the Legislature for a raise.

The administrator would serve as chairman of the unpaid board of five members, but would have no vote. The five members would be appointed by the governor for staggered terms ranging from one to five years, and one member would have to be from organized labor, one from administration and finance, and one from the community in which an authority facility exists.

While the board would have control of financing projects, the administrator would be able to initiate study of the need for construction of new facilities and make any necessary studies of new modes of transportation, including mass transit, bus and truck terminals, off-street parking facilities and railroad terminals.

The committee also voted to remove from the legislation the Port Authority's power to take public property by eminent domain. It retained, however, authority to take private property for any new projects it may undertake in the future.

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THE SPRINGFIELD UNION
SPRINGFIELD, MASS., TUESDAY, MARCH 25, 1975

PANEL OKAYS MASSPORT OVERHAUL BILL

By JAMES M. SHANKS
Union Staff

The Legislature's Joint Administration Committee Monday reported out a bill which would completely overhaul the administrative structure of the Massachusetts Port Authority.

Major portions of the bill came from Sen. Alan D. Sisitsky, D-Springfield, Senate chairman of the committee.

The bill essentially ends the previously dictatorial powers of the executive director of Massport and makes the whole authority more responsible to the governor, Sisitsky said.

Impetus for the legislation, which is expected to pass both houses substantially intact, came from the six-year battle between former Gov. Francis W. Sargent and Massport Executive Director Edward King.

The present board of seven members serving staggered seven-year terms would be reduced to five persons serving staggered five-year terms. One member must be a representative of organized labor, one an expert in administration and finance—possibly a representative of Massport bondholders—and one a resident of a community in which a Massport facility exists, such as Logan Airport in East Boston.

The administrator would be appointed directly by the governor—not the board—and serve at the pleasure of the governor. He would be a non-voting ex-officio board member. Presently the board appoints the administrator.

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The salary of the administrator would be reduced from nearly $60,000 to $45,000, the same as the administrator of the Massachusetts Bay Transportation Authority and $5,000 more than the governor.

"The governor wanted a purely advisory board, with every member serving coterminous with the governor. We refused to accept either," Sisitsky said.

The board will have power to restrain the administrator in the key areas of issuing bonds, setting toll rates, purchasing property, exercising eminent domain, and the letting of contracts over $250,000, Sisitsky said.

Massport operates most of the Boston Harbor shipping facilities, Logan Airport, the Mystic River Bridge, and Hanscom Field.

A trustee for Massport bondholders threatened to bring suit against the state—possibly demanding immediate payment of more than $300 million in outstanding revenue bonds, if the Legislature acted to change the structure of the authority, which has not been substantially revised since its inception in 1954.

Sisitsky said the current bill would probably withstand that or any other court challenge.

"We want to make Massport more responsive to the direction of the governor, particularly future governors," Sisitsky said. "At the same time this will protect the bondholders, have no adverse impact on Massport revenues, and withstand any Constitutional attack in the courts."

Gov. Michael S. Dukakis would appoint all five members of the board if the legislation passes, with the next governor appointing one member each year, with the option of appointing the administrator as well. Board members will not be salaried.

Sisitsky said the bill represents a compromise between what Dukakis sought and what he thought would be advisable."

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SPRINGFIELD, MASS., DAILY NEWS,
TUESDAY, MARCH 25, 1975

DUKAKIS GIVEN AUTHORITY OVER MASSPORT

BY RICHARD GAINES

BOSTON (UPI)—The legislature's State Administration Committee has endorsed a bill giving the governor control over the Massachusetts Port Authority.

Under the bill, which was reported Monday for House action, the director of the authority would be chosen by the governor, not the board of directors as is presently done.

The legislation, an amended version of a proposal submitted last week by Gov. Michael S. Dukakis and his transportation secretary, Frederick Salvucci, represents the most serious effort at reorganizing MassPort since its creation.

Sharp Protest

If adopted, the bill is almost certain to bring sharp protests from holders of $310 million in revenue bonds. The New England Merchants National Bank, trustee for the bondholders, warned the legislature any reduction in the independence of the authority might mean law suits.

Mark Wheeler, chairman of the bank's board, told the committee any change in the structure "which erodes the independence and non-partisanship of the port (authority) would impair the bondholders' (investment) and would bring on legal action including the possibility of seeking a bankruptcy ruling."

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The committee proposal makes a number of changes in the Dukakis-Salvucci plan, but concedes their major request—for a Massport administrator serving at the governor's pleasure.

Executive Director

At present, the seven-member Massport board, which consists of gubernatorial appointees serving seven-year staggered terms, picks the executive director.

This structure has insulated Massport from control from Beacon Hill, but at the same time has left the authority from time to time in philosophical conflict with the governor and legislature, especially on issues such as runway expansion.

The committee bill abolishes the Massport board, replacing it with a five-member advisory board, named by the governor to staggered five-year terms. Dukakis suggested creation of a powerless advisory board, but the committee bill gives the board some authority.

Propose Board

Without prior approval of the proposed board, the administrator would be prohibited from issuing bonds, changing tolls, buying property, exercising eminent domain authority, signing arrangements or contracts over $250,000.

Administration sources, however, said those limitations would not inhibit the full integration of Massport as an important cog in the implementation of political and social policy.

The one possible objection from Dukakis is over a provision making Massport subject to the state's collective bargaining laws.

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THE BOSTON GLOBE
THURSDAY, MARCH 27, 1975

COMMITTEE REVERSES ACTION ON MASSPORT CONTROL

BY RACHELLE PATTERSON
Globe Staff

Gov. Michael S. Dukakis persuaded the Legislature's Committee on State Administration yesterday to reverse its previous vote and make the terms of all five members of the advisory board of the Massachusetts Port Authority coterminous with that of the governor.

Dukakis told the committee at an executive session that staggered terms under the proposed reorganization of the agency would make it difficult to carry out state policy.

On Monday the committee approved legislation that would permit the governor to appoint a single administrator and a five-member advisory board which would have five-year staggered terms.

Sen. Alan Sisitsky (D-Springfield), the committee chairman, said the vote yesterday was 9-6 to make the terms coterminous. Sisitsky said it was decided early yesterday to invite the governor to the executive session.

"It was the courteous thing to do," he said. "He appeared and we heard his argument. He convinced members to make both the administrator and board members coterminous."

Sisitsky, who on Monday said the bill agreed upon by the committee was "litigation proof," declined to say what effect making the terms of both the administrator and the board coterminous with the governor's terms would have

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on threatened court action by the New England Merchants Bank, trustee for the Authority's bond holders.

The bank's position is that the reorganization proposal "politicizes" the Port Authority, and may not be in the bondholder's best interests.

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THE BOSTON GLOBE
WEDNESDAY, APRIL 9, 1975

MASSPORT BONDS IN DOUBT AS TAXES, CHANGES LOOM

BY RACHELLE PATTERSON
Globe Staff

Boston investment counselors said yesterday the Massachusetts Port Authority will not be able to float any new revenue bonds for improvements because of the several moves pending in the Legislature to reorganize and tax the agency.

The controversy over the Authority's operation could adversely affect plans by Gov. Michael S. Dukakis to float general obligation bonds to pay for part of the state's expected $400 million deficit.

Floating new bonds by the Authority while the Legislature is trying to change its structure would be unthinkable, according to Elma Woods, consultant for Shearson Hayden Stone, a Boston investment firm. "It couldn't be done."

Edward T. Hanley, interim executive director of the Authority, said yesterday the Authority improvement fund is committed until 1976 and that requests have been received from the airlines and other lessees for $20 million worth of improvements, for which there is no money.

He said that, if the Authority wanted to borrow the money to improve the seaport or make needed repairs to its properties or for any other purposes, there is no way the bonds would be marketable.

Douglas Lyons, an officer of Weeden & Co., Boston investment firm, said it would be out of the question to float any Authority bonds until the political problems are resolved.

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He said the move by Dukakis to take over control of the agency through his reorganization proposal and the various tax measures have generated a loss of confidence by the investors in the agency and in state government issues generally.

"Call any bank; they'll tell you," he said. "There is no question that the controversy over the Port Authority will lower investor confidence. If the governor decides to float a bond issue to pay for the state's deficit, he will be able to get a bid but will probably have to pay a higher interest rate."

As the investment analysts were commenting on the rippling effect the controversy could have on future bonding, a poll of some members of the Legislative Committee on Taxation was under way to determine whether a bill will be reported out of committee which would impose taxes on the Authority or its lessees.

The committee, after a three-hour session with officials of the Authority, voted, 9-7, to draft a tax bill and report it favorably. The House chairman, however, Vincent Piro (D-Somerville), who opposes all 18 bills which seek to impose taxes on the Authority, moved to poll the entire committee of 21 members in an attempt to kill all the bills.

The results of the poll will be announced at another executive session, scheduled for this morning.

Rep. Michael Connolly (D-Boston), who began lobbying for support for a bill to tax just the private businesses at Logan—such as Hertz Rent-a-Car or the Hilton Hotel—soon after the polling began, predicted victory for his side.

Frederick Salvucci, secretary of transportation, informed the committee that the governor is now in favor of a nar-

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rower bill to tax private businesses at the airport rather than the broader measure to tax all the Port Authority property.

After meeting with members of the financial community, Salvucci said advancing such a broad taxing measure "could affect the state when it decides to float bonds." He said he didn't want to "hurt that effort."

The strongest support for taxing the Authority or its lessees comes from Boston legislators who are looking for ways to broaden the city's tax base. The measure to tax private businesses was narrowly defeated last year, despite a ruling from the Supreme Judicial Court that such taxation is legal.

In 1956, when the law establishing the Massachusetts Port Authority was enacted, the commercial airlines industry was still developing. To encourage its growth, a tax-exempt status was given its properties.

Private businesses on Authority-owned property outside the airport peninsula, such as Jimmy's Harborside restaurant, pay $1.4 million in taxes to the city. Airlines pay $5 million in personal property taxes to the city as well.

Profit-making businesses at the airport pay the Authority a certain percentage of their gross revenue in lieu of taxes to the city. Lease contracts between the Authority and the businesses vary, both in percentage of revenue and in length of term.

In turn, the Authority furnishes the businesses with fire, street cleaning, sewage and other services.

In fiscal 1974 the Authority received $8.5 million from rentals at the airport and $9.8 million from concessions. Total gross revenue was $47 million.

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Coopers & Lybrand, a private accounting firm hired by the Authority, told the taxation panel yesterday that the variety of taxation proposals before it could cost the Authority $3 million to $45 million a year in taxes.

They also estimated that the replacement value of all the Boston property of the Authority—Mystic-Tobin Bridge, airport and seaport—was $600 million.

Hanley said the proposal to tax just the private businesses would result in a substantial loss in Authority revenue, because most leases allow the lessee to deduct the tax payment from the rental payment.

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SPRINGFIELD, MASS., DAILY NEWS
TUESDAY, MAY 20, 1975

SENATE WILL VOTE TODAY ON MASS. PORT TAKEOVER

BOSTON (UPI) — The Senate today was expected to debate and vote on Gov. Michael S. Dukakis' controversial plan to take over the Massachusetts Port Authority.

It was likely the debate will produce a rare confrontation between the two most powerful senators—President Kevin B. Harrington, D-Salem, and Senate Ways and Means Committee Chairman James A. Kelly Jr., D-Oxford.

Control Asked

Harrington, at the request of the governor, was prepared to submit a bill that would give Dukakis—and future governors—firm, personal control of Massport which owns and operates Logan International Airport and the Mystic River Bridge.

But the proposal that will come out of Ways and Means and onto the floor is Kelly's bill which, over Dukakis' objections, falls far short of giving him the kind of control over the Port Authority that he seeks.

Under the Ways and Means Committee concept, the present Massport Board of Directors would be retained and would continue to serve staggered terms but the governor, for the first time, would have a veto over decisions to hire and fire the executive director.

"This plan," said Kelly, "gives him (the governor) a man who represents his interests but insulates the director from political influence."

The Dukakis-Harrington concept, which was endorsed last month by the State Administration Committee, would

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replace the seven-member board with a five-member board whose terms would coincide with the governor's. But the board would have virtually no authority. That would reside with the director who also would be chosen by the governor.

Relationships

Sen. Alan D. Sisitsky, co-chairman of the State Administration Committee and a Dukakis loyalist, and the governor himself declined last week to speculate on the outcome of the Senate debate over Massport.

"The fate of the bill," Sisitsky predicted cryptically, "will reflect the governor's relationship with the legislature. Actually, its up to Kevin Harrington," he said.

Harrington's Press Secretary John Abbott said Harrington would submit Dukakis' bill but would not exert influence to insure its adoption. "He'll offer it and there'll be a vote," said Abbott. "The president is doing it at the request of the governor."

Dukakis initially said he would sign but not submit legislation reforming the Port Authority structure but eventually decided he would make the issue a priority item in his legislative package.

The governor said he felt the time was right for a change in the agency whose structure has remained the same since it was created in 1956.

Controversial Move

After the election but before Dukakis took office, the directors ousted Executive Director Edward J. King in a highly controversial move. It was alleged but never proved that Dukakis had given the go-ahead for the firing to the

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four Massport board members who were allied with him ideologically.

Dukakis has denied any involvement in the ouster of King—a favorite of the business community but considered an enemy of activists from communities near the airport.

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SPRINGFIELD, MASS., DAILY NEWS
WEDNESDAY, MAY 21, 1975

SENATE DEBATE ON PORT AUTHORITY TO RESUME—
REPUBLICANS SEEK VOTE TO TABLE FOR NOW
BY RICHARD GAINES

BOSTON (UPI)—The Senate debate on whether to give Gov. Michael S. Dukakis control over the Massachusetts Port Authority was scheduled to resume today on a motion to table the matter.

That motion was made Tuesday by Assistant Senate Minority Leader David H. Locke, R-Wellesley, who looked at a series of complex proposed amendments and suggested majority Democrats get their heads together on the issue.

Locke was referring to an apparent dispute between the two most powerful senators, President Kevin B. Harrington, D-Salem, and Ways and Means Committee Chairman James A. Kelly Jr., D-Oxford.

Harrington supports the governor's efforts to take control of Massport and its two major properties—Logan International Airport and the Mystic Tobin Bridge—while Kelly is pushing a compromise position giving the governor only a veto power over the hiring and firing of the Massport director.

Majority Vote

Under the present structure, the seven Massport board members choose a director by majority vote. The directors serve staggered terms which ostensibly insulate them from political influence. However, during the period between the election and Dukasis' ascent to office the board voted 4-3 to fire director Edward J. King.

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Their allegations—never proved—that Dukakis manipulated King's ouster to set up his takeover of the authority. These charges Dukakis has categorically denied.

The Senate was not expected to delay action on the bill. But, after debate opened on the issue Tuesday, Kelly predicted the matter was far from resolved.

"I think this will be on the calendar for a long time yet," said Kelly. "I don't think even Jimmy the Greek would give odds on this one."

But Sen. Alan D. Sisitsky, D-Springfield, who was the leading advocate of giving the governor control over Massport, said "we're going to win in the Senate." He declined to make a similar prediction about House action.

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SPRINGFIELD, MASS., DAILY NEWS,
THURSDAY, MAY 22, 1975

MASSPORT TAKEOVER BACKED BY SENATE
BY RICHARD GAINES

BOSTON (UPI)—Somewhat grudgingly, the Massachusetts Senate has pushed Gov. Michael S. Dukakis one step closer to one of his major goals—to bring the Massachusetts Port Authority under his control.

The 25-10 roll call Wednesday —the first floor test of legislative leanings on the issue—came after only token debate between Sen. Alan D. Sisitsky, D-Springfield, who said the bill would make Massport more accountable, and Sen. John F. Parker, R-Taunton, who complained the move could be disastrous for Logan International Airport, the prime Massport property.

Second Vote

Though the vote was overwhelming, the Senate must give the controversial bill a second vote before it moves to the House. House opponents were expected to marshal their forces to block the Massport takeover.

If the legislation becomes law, the trustee for the stockholders say they will file a federal court suit challenging the change on grounds the move could jeopardize their investment. The trustee is the New England Merchants National Bank.

Under the Senate-approved bill, the governor would choose the director of the Port Authority. Under its present structure, a seven-member board, serving staggered terms, choose the director by majority vote.

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Change of Mind

The governor originally said he would sign—but not submit or push—a bill to make him and his successors directly accountable for the operation of the Port Authority. But after his election and the firing of Executive Director Edward J. King, Dukakis changed his mind and submitted a bill to take control over the authority.

It was approved by the State Administration Committee but the Senate Ways and Means Committee moved to strike a compromise between the status quo and Dukakis' proposal. It would have given the governor only a veto over the selection and firing of the executive director.

However, Dukakis convinced Senate President Kevin B. Harrington, D-Salem, to intervene personally to see that his bill was approved.

Many senators who voted for the governor's bill were not completely pleased with it. One, Sen. Michael J. LoPresti, D-Boston, who lives in East Boston, directly adjacent to the airport, said he was voting with the governor only with misgivings.

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THE BOSTON GLOBE
THURSDAY, MAY 22, 1975

SENATE MOVES TO GIVE GOVERNOR CONTROL OF MASSPORT

BY WILLIAM A. HENRY 3D
Globe Staff

The state Senate approved yesterday a Massachusetts Port Authority reorganization proposal similar to that of Gov. Michael S. Dukakis that he be given direct control of the agency.

The 25-10 vote, on amending an amendment of a twice-rewritten bill, restored Dukakis's plan for an executive director reporting to the governor and a five-member advisory board coterminous with him.

But several members gave notice they would try to introduce amendments—some completely new—on the next round of required approval in the Senate.

The Massport bill will be sent then to the House, where further debate and attempts to amend are expected.

Reorganization of the Port Authority to restore it to the political process is opposed by banks, bondholders and Republicans and has become one of the few partisan issues of the legislative session.

The proposed reorganization has also prompted warnings from the business community that any change hurting bondholders could also lower the state's bonding credit rating and thereby increase its interest costs.

In addition, a consortium of banks representing bondholder interests has pledged a suit to oppose the reorganization, contending that any change in Massport's independence could lead to a siphoning off of revenues that

would lessen their chances for steady repayment of interest and principal.

New York and New Jersey won a similar suit against the New York Port Authority bondholders who tried to block that agency's involvement in mass transit.

The Massachusetts Supreme Judicial Court held last year that the state could legally increase taxes on Massport properties, although the move would clearly reduce revenue available to pay bondholders.

Opponents of the reorganization say the present structure—an independent seven-member board, named to staggered terms, and a chief executive answerable only to the board—has been basic to the authority's 19-year evolution from a money loser to a major moneymaker.

"If this (reorganized structure) had been in effect since 1956," Republican floor leader John Parker (Taunton) said, "you wouldn't have been able to land a Piper Cub over there."

Democrats offered mostly partisan arguments for the reorganization, which Gov. Dukakis has made one of his priorities.

The floor leader for the bill, Alan D. Sisitsky (D-Springfield), said senators should support reorganization because it would not hurt bondholders and because it reflects "input" from a range of legislators.

Sisitsky did not explain why he thought bondholders would be protected despite the change, but he cited the New York and Massachusetts court rulings in saying that the state is not obliged to place bondholder interests first in any case.

Dukakis made Massport's unresponsiveness to neighboring communities a campaign issue, and the senator who represents most of them, Michael LoPresti Jr. (D-East Boston), described the proposed reorganization as "slightly more responsive because the governor goes to the people every four years."

LoPresti said however, that he was far from satisfied that the reorganization would mean any benefit for his community.

"This bill does not make anyone more responsive," he said. "It just shifts power from one man to another . . . I am coming to believe we will never see a progressive Massport bill in here that deals with the real issues of soundproofing, planning and curfews."

Several Democratic members broke with the governor on Massport, and others who voted for the bill said in interviews they did so reluctantly.

One Democrat who voted against Dukakis was James A. Kelly Jr. (D-Oxford), chairman of the Senate Ways and and Means Committee and a fiscal adviser to the governor.

Ways and Means wrote a defeated amendment that would have limited the governor to veto power over the selection of the executive director. Kelly's advocacy of that plan marked a rare split between him and Senate President Kevin B. Harrington.

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THE BOSTON GLOBE
TUESDAY, JUNE 3, 1975

SENATE SUPPORTS DUKAKIS BID TO CONTROL MASSPORT

BY WILLIAM A. HENRY 3D
Globe Staff

Gov. Michael S. Dukakis, who has been having trouble winning legislative backing for his budget and fiscal policies, won another round yesterday in his bid to take control of the Massachusetts Port Authority.

The Senate, on a vote of 28-5, approved the governor's proposal with one major change.

The change—added on a voice vote yesterday—was a cut in the salary of the executive director to $39,000, or less than Dukakis's own $40,000 salary. The bill now goes to the House.

Dukakis had proposed the director be paid $45,000. Massport has been without a permanent executive since last Nov. 21, when Edward J. King was ousted by a 4-3 margin of the current board. King was earning $58,500 a year and was the highest paid official in state employ.

Senate Republicans have led the fight against Dukakis's reorganization plan, and after the salary was cut GOP floor leader John Parker (R-Taunton) predicted "there are very few people in the country who will take that job for that kind of money."

The Republicans' major objection to the governor's plan is economic: they claim returning the now-independent Port Authority and more particularly Logan Airport, to political control will destroy the economic and revenue-returning growth it has made since removed from direct

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supervision in 1956. Then a money loser, Massport is now probably the most successful economic development agency in Massachusetts.

Democratic senators have said privately they see Massport control as a partisan issue, in part because Republicans have chosen to make it one. Democrats are antagonistic, both publicly and privately to GOP concern for the rights of Massport bondholders.

The reorganization bill's floor manager, Senate chairman Alan D. Sisitsky (D-Springfield) of the State Administration Committee, argued that Massport's economic base is solid and that decisions about expansion, operations and use of funds should be made responsive to the public interest rather than to bondholder concerns.

Dukakis has long advocated compelling Massport to involve the communities adjoining the airport and appointed Frederick P. Salvucci, who organized anti-Logan sentiment while East Boston Little City Hall manager, as state Transportation secretary.

But the senator from the airport's neighboring communities, Michael J. LoPresti (D-East Boston), tried unsuccessfully to retain the quasi-independent board. His community would have no recourse under the new plan, he said, if some future governor opted for airport expansion.

Massport is run now by a seven-member board, appointed by the governor to staggered seven-year terms, with full power to hire or fire a chief executive. Dukakis's plan, as amended with his collaboration, would provide for a board whose term coincided with the governor's and would enable him to hire and fire the executive.

The executive, in turn, would have sole power to grant all contracts of less than $250,000—something Parker labeled an invitation to graft and corruption.

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Parker's assistant leader, David H. Locke (R-Wellesley), moved reconsideration of yesterday's approval vote. Debate on Locke's motion is scheduled today. Locke has said he is "exploiting to the fullest" the parliamentary devices for stalling passage of the bill—but his reconsideration move is his last chance.

Should the House vote for a different version of the bill, however, the delaying tactics can start anew. A spokesman for House Speaker David M. Bartley said eventual approval is likely, but could not say when the bill will be debated.

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SPRINGFIELD, MASS., DAILY NEWS

TUESDAY, JUNE 3, 1975

DUKAKIS SCORES VICTORY FOR CONTROL OF MASSPORT

BY JAMES R. DORSEY

BOSTON (UPI)—Gov. Michael S. Dukakis won a major victory in the Senate with overwhelming approval Monday of his plan to control the controversial and powerful Massachusetts Port Authority.

However, the bill faces a more uncertain future in the House where antagonistic feelings are running high against Dukakis because of his budgetary package.

"It's gonzo in the House; they'll croak it," said one senator who fought for the governor's bill. "There's too much antagonism against him."

Priority Items

The Massport reorganization bill was one of a handful of priority items submitted by Dukakis earlier this year. Bringing control and accountability over the port authority had been one of his campaign promises.

Under the bill, the current seven-member Massport board which serves staggered terms would be replaced by a five-member body picked by and serving terms equal to the governor.

The board's executive director would serve at the pleasure of the governor. Currently, the director serves at the pleasure of the board.

Senate approval of the measure came on a 25-8 roll call. The vote was to be reconsidered today but that was seen as a mere formality.

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Banks Opposed

In addition to the eight Senate votes against the bill —most of them coming from Republicans—the bill is opposed vehemently by the state's banking community, which holds a majority of the authority's $310 million worth of bonds.

Mark Wheeler, chairman of the board of New England Merchants National Bank, months ago told the legislature that as trustees for the bondholders they would fight any change in the authority's structure.

"Any change in the structure which erodes the independence and non partisanship of the port (authority) would impair the bondholders' (investment)," Wheeler said.

Amendments Fail

Three amendments were attempted Monday which would have given some independence to the revised authority. They failed handily. Only one, changing the salary of the executive director from $45,000 to $39,000, prevailed.

Senate Minority Leader John Parker, R-Taunton, said giving the governor power over Massport was "a dangerous thing." He and other Senate Republicans warned that the state would be sued by the Massport bondholders.

State Administration Chairman Alan D. Sisitsky, D-Springfield, carrying the bill for the governor, said the reorganization suggested by Dukakis was the only way to make Massport accountable to the public.

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NEWSPAPER ARTICLE ANNOUNCING NEW JERSEY'S DECISION NOT TO FUND LOCAL SHARE OF PLAINFIELD EXTENSION

DAILY NEWS

MONDAY, FEBRUARY 24, 1975

SAGNER DIAGNOSES JERSEY'S TRANSIT MALADIES

Here are highlights of the One-on-One interview with Transportation Commission Alan J. Sagner. He was interviewed by John McLaughlin, Trenton Bureau Chief for The News.

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PAYING FOR PATH-PLAINFIELD

The governor has directed us to proceed with this project. We are now discussing with the Port Authority how we handle the local share. There is about $80 million of funds that are needed to match the federal share.

Q: Are you, in a sense, reneging on the commitment that Gov. Cahill made to put up that local share?

A: I can't renege on a commitment that in my opinion was never made. If it's not funded, it wasn't a commitment—it was an undertaking. First of all, $40 million won't do the job now. Secondly, the $40 million is not here. We made a proposal to the Port Authority on a way the $40 million could be raised on a leased arrangement, but whether that will be acceptable or not I don't know. What I would prefer to see is that the Port Authority would put up the money.

Q: Are you going to insist on that?

A: No, this is nothing I'm going to insist upon—there is no point in insisting like that. The obligation of the state then would be to be concerned with the operating costs. Then the state would just subsidize it like every other line.

Plaintiff's Supplemental Exhibit C

ON HOLDING COSTS DOWN

I think at some point we are going to have to say that we can't continue to pay the price, and that the people who operate the facilities are going to work for wages that are comparable to what other people in the economy are getting, and give productivity in return for that. We probably cannot continue to afford to underwrite public transportation. An example of what I'm talking about is the New York City subway system, where the wages that are paid are sometimes in excess of those for a person with an advanced degree.

I'm suggesting a wage-price freeze—which is contrary to the governor's view. The governor doesn't believe in it because he doesn't believe it would work, but I believe if we continue to chase our tail, we give labor an increase with one hand and we take it away with higher prices with the other hand, and the only person that really gets caught in the squeeze is the person who is on pension or on a fixed income—the farmer, the retired people.

Q: You are suggesting that a bus driver is overpaid?

A: No I'm not saying he is overpaid. We are going to say that if the bus drivers in New Jersey are going to have to receive what the MTA (Metropolitan Transportation Authority) is paying in New York, then the State of New Jersey, with its present resources is not going to be able to meet it.

ENVIRONMENT VS. ECONOMY

I have no argument with environmental groups. I have an argument with the environmental laws that apply ex post facto. In other words, we have a project that has been approved, we've began our planning for it and environmental laws or new regulations are issued and they are

Plaintiff's Supplemental Exhibit C

applied to that project and then we stop and we try to do studies in accordance with the new regulations. We start the project again, new regulations come out when we are in another stage of development, and we stop again. My position is that once a project has had a public hearing and it has been approved that it be permitted to proceed and that the environmental regulations apply to subsequent projects.

ON PUBLIC TRANSPORTATION

I am constantly arguing with people who say we don't need public transportation, and if we can put a man on the moon, we can find another solution to the energy problem. I didn't believe that was true then and I don't believe it now. I also don't believe that we can disregard our highways and move everybody on public transportation. We have to use car pools and we have to use public transportation when it's proper to do so. It might not be convenient, but you have to live with it.

ANOTHER FUEL CRISIS?

I don't know that we will have a crisis. The fact that we are paying what we are paying for fuel is a crisis. The cost of energy is the crisis, not that you have to line up your car at a pump and wait for it—that's not the crisis. I just received notice today from one of our bus operators that Amoco raised the price of diesel fuel two cents. Now, on the other hand, I read where Saudi Arabia is cutting back in production and tankers are standing around idle because there is an oversupply of fuel. So it's not a crisis that it isn't available but that there is a tight control of the price, and the cost is very high. It's estimated that if we continue to purchase foreign oil at the rate we are doing, within a decade we will have shipped abroad the equivalent value of all the stocks on the New York Stock Exchange.

Plaintiff's Supplemental Exhibit D

NEWSPAPER ARTICLE ANNOUNCING NEW JERSEY'S DECISION NOT TO FUND LOCAL SHARE OF PLAINFIELD EXTENSION

THE COURIER-NEWS,

MONDAY, FEBRUARY 24, 1975

SAGNER OFFERS A PATH DEAL

TRENTON (AP)—State Transportation Commissioner Alan Sagner says the Port Authority of New York and New Jersey should put up the entire local share of the cost to extend the PATH rail line to Plainfield.

After that $80 million bite, Sagner said, New Jersey would agree to subsidize operating deficits on the line.

Sagner's comments in today's New York Daily News continued to cloud the future of the rail project. The state and the port authority have been unable to agree on how the local share should be raised since the project was announced in 1972.

If an agreement ever comes, the rest of the cost of the $347 million project is to be paid with federal aid.

Sagner contended that the state never committed itself to share the $80 million local cost with the port authority. He said the administration of former Gov. William T. Cahill "never appropriated any funds so there was no firm commitment" for the state to put up $40 million.

"We think the port authority should be responsible for capital construction costs and then as far as the state is concerned the obligation should be with operating costs," Sagner said.

Plaintiff's Supplemental Exhibit E

STANDARD & POOR'S REPORT

DATED JUNE 16, 1975

MUNICIPAL ANALYSES AND BRIEFS

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

$100-million Notes Rated "A"

The Port Authority of New York and New Jersey plans to negotiate on June 16, the sale of $50,000,000 Consolidated Notes, Series BB, due June 1, 1978, and $50,000,000 Consolidated Notes, Series CC, due June 1, 1978. The Notes will be callable at par on and after December 1, 1976. Proceeds of the Series BB Notes will be used for various capital expenditures, provided that not more than 10% of such proceeds will be used in connection with the World Trade Center and certain portions of an extension of the Port Authority Bus Terminal. Proceeds of the Series CC Notes will be used for financing the cost of completion of the World Trade Center.

These Consolidated Notes are Consolidated Bonds of the Authority within the meaning of the Consolidated Bond Resolution adopted by the Authority on October 9, 1952. They are direct and general obligations for which the full faith and credit of the Authority are pledged. They are secured equally and ratably with all other Consolidated Bonds and Notes by a pledge of (a) the net revenues of all existing facilities of the Authority (not including cars acquired under the New York State's Commuter Car Program) and any additional facilities financed in the future by Consolidated Bonds, (b) the General Reserve Fund of the Authority equally with other obligations of the Author-

Plaintiff's Supplemental Exhibit E

ity secured by that Fund, and (c) the Consolidated Bond Reserve Fund

Although it is anticipated that these Notes will be refinanced by long term Consolidated Bonds, the Authority does have the resources to retire them without such refinancing, if necessary. For the year ended December 31, 1974, the Authority reported net revenues available for debt service and reserves of $179 million (up from $157 million in 1973 and $140 million in 1972). In addition, it is estimated that recently revised toll schedules for the Authority's six interstate vehicular crossings will result in additional revenues of $33.6 million. These two revenue figures combined total approximately $213 million, nearly equal to the estimated 1978 debt service, on Consolidated Bonds and these $100 million Consolidated Notes, of $216 million. As noted above, the Notes also are secured by the General Reserve Fund, which totaled $173.5 million on December 31, 1974, substantially more than sufficient to retire the Notes, if necessary.

In 1974, the states of New York and New Jersey repealed the statutory covenants adopted in 1962 limiting the Port Authority's ability to apply pledged revenues and reserves to additional deficit passenger railroad facilities. The validity of the 1974 repeal is presently being litigated. We have expressed concern in the past about the possibility of such a repeal and will continue to watch closely the effect of future Authority involvement in mass transit developments on the credit worthiness of the Authority's debt securities.

Despite this concern, we are continuing our "A" rating on the Port Authority's Consolidated Bonds and are also rating the new Consolidated Notes "A" based upon the Authority's strong operating, financial and management record and the prospects for a continuation of this outstanding record.

Plaintiff's Supplemental Exhibit F

MOODY'S REPORT

DATED JUNE 11, 1975

MOODY'S INVESTORS SERVICE, INC.

MUNICIPAL CREDIT REPORT

June 11, 1975
RC

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Rating: Consolidated Bonds and Notes: A

Offering: $100,000,000 Consolidated Notes comprising $50,000,000 Series BB and $50,000,000 Series CC, for negotiated sale in June 1975

Dated: 6-1-75 Due: 6-1-78 Call: beginning 12-1-76

L.O.: Patrick J. Falvey, Authority General Counsel; Hawkins, Delafield & Wood, N. Y.

Type enterprise: bi-state agency of New York and New Jersey which operates air terminals, toll bridges and tunnels, marine terminal facilities, World Trade Center, PATH rail transit system, other facilities including bus stations, truck terminals, heliports

Pledged revenues: notes are direct and general obligations of the Authority secured equally and ratably with all other Consolidated Bonds and Notes by a pledge of the net revenues of the existing facilities of the Authority, the General Reserve Fund of the Authority,

and the Consolidated Bond Reserve Fund of the Authority

Purpose: Series BB notes—capital expenditures for bridges and tunnels, docks and wharves, airport terminal and service buildings, Hudson Tubes portion of PATH, parking and storage facilities directly related to any of these, and World Trade Center. No more than 10% of proceeds are to be used for World Trade Center capital expenditures and those integral portions of an extension to the Port Authority Bus Terminal related to any future construction above the extension

Series CC notes—financing cost of completion of the World Trade Center

Summary and Opinion: This bi-state agency maintains earning capability to meet requirements and to service its Consolidated Bonds within reasonable margins. Net revenues from the airports, marine terminals, and toll bridges and tunnels more than offset deficits of the PATH commuter rail system and the World Trade Center at this time.

The Superior Court in New Jersey has upheld New Jersey legislation that repealed the 1962 covenant restricting Authority involvement in deficit mass transit operations. This decision is a matter of deep concern to bondholders generally, and the decision has been appealed. The effect on the Authority cannot be determined at this time in absence of a definite plan for financing mass transit projects and facilities deemed to be non-self-sustaining. In the meantime, earnings of the present facilities are good, reserves for debt service continue strong, and recent toll

increases have further strengthened financial position at this time.

These obligations of the Authority now being offered, while stated as Consolidated Notes, are considered as bonds by the Authority and the A rating on the Authority's Consolidated Bonds that was recently confirmed (see our Review Report dated 5-22-75) is also applicable to the Series BB and CC notes for the reasons stated above as well as the claim on earnings and provisions for retirement. Notes are being issued in conformity with the Consolidated Bond Resolution of 1952. Under provisions of this Resolution for issuance of additional parity debt with the earnings test of 1.30 times maximum prospective debt service by net revenues, it provides that in the computation of this maximum on any short-term bonds, there may at the Authority's option be substituted for the debt service on the short-term bonds the debt service which would be payable if the short-term bonds were refunded by bonds having characteristics of 30 year with amortization to retire the bonds annually by the 30th year, and interest at 1½ times the rate on the short-term bonds. The A rating on the notes.

Current Developments:—Recent Data

(1) On 5-6-75, the Federal Highway Administrator served on the Authority a motion filed with the Administrator by a complainant for an order requiring the Authority to create an escrow account for the receipt of revenue derived from the 5-5-75 toll increases on the bridges and tunnels. The Administrator will decide whether to grant or deny this motion. In addition, the Administrator intends to conduct an investigation in complaints that the 1975 toll increases are unjust and unreasonable;

Plaintiff's Supplemental Exhibit F

(2) estimated total cost of the extension to the Port Authority Bus Terminal and expansion of Lincoln Tunnel approaches, including the cost of land but not the air rights development, is about $137,500,000. Bids for the first contract for the extension were authorized on 5-8-75;

(3) in 1972, PATH and Penn Central entered into a memorandum of intent under which PATH is to rehabilitate Penn Station in Newark. The memorandum and subsequent agreement is subject to approval of the U.S. District Court for the Eastern District of Pennsylvania which is administering the Penn Central reorganization proceedings. Rehabilitation is expected to take about 5 years at an estimated $12,300,000 cost;

(4) regarding the World Trade Center, construction is expected to be completed in stages through 1977, more than 75% of the Center's office space is occupied or under lease for occupancy as construction is completed, the total cost of the Center is now estimated at about $950,000,000 (Authority investment in the facility at 12-31-74 was about $807,789,000), and in addition to the portion of increased costs of the Center to be financed from the Series CC Notes, about $85,000,000 remains to be funded by the Authority in the future;

(5) on 5-14-75, the validity of the 1974 action repealing the 1962 covenant restricting Authority involvement in deficit mass transit operations was upheld by the Superior Court in New Jersey, Bergen County. The United States Trust Company, which began the action in 1974 on its own behalf and as trustee for two

Plaintiff's Supplemental Exhibit F

series of Consolidated Bonds, appealed the decision, and the appeal has been certified directly to the New Jersey Supreme Court.
On 6-17-74, United States Trust Company instituted a similar action in New York, in the Supreme Court, New York County, against the State of New York and the Attorney General of the State, which is still pending;

(6) to limit the potential excess marine terminal capacity in the Port of New York, the Authority and New York City entered into an agreement, approved by the Board of Estimate on 3-20-75 and subject to approval of the FMC, under which (a) the Authority and City agree for the 10-year period beginning 1-1-75 not to build container berths in addition to those now existing or under construction or firmly required by lease or other agreement by 1-1-75, except for the Red Hook project in Brooklyn; (b) during the 10-year period, Authority and City would not establish rental or berthing rates to return revenues below those required to meet the costs for the container berthing facilities; and (c) City and Authority shall cooperate in a joint program to create incentives for the attraction of new types of cargoes to the Port and for effective industrial utilization of waterfront property no longer suitable for handling of waterborne cargoes;

(7) the Authority has undertaken preparations to carry out the statutory programs of 1971 and 1974 regarding mass transportation and rail links to Kennedy and Newark International. In May 1975, the Authority filed an application with UMTA of the U.S. Department of Transportation for $277,600,000 to

Plaintiff's Supplemental Exhibit F

pay part of the cost of extending PATH from Newark to Plainfield. Local contribution for this part of the project totals $69,400,000, to be funded by the Authority from proceeds of future bond issues.
It is contemplated that PATH will enter into an agreement with New Jersey or a subsidiary corporation of the State under which PATH would acquire all needed property out of the proceeds of Authority bond sales and UMTA grants, and lease the property to the State or its subsidiary. The amount of rent to be paid by the State would depend mainly on the outcome of the litigation relating to the repeal of the 1962 covenant. This litigation will affect the extent to which the project or the State must cover debt service on the Authority's bonds issued for this project. Under arrangements to be approved by the ICC as needed, PATH's operating responsibility would be limited to managing the operation of the property for so long as the State or its subsidiary paid to PATH any required rental and the annual net operating costs and expenses directly attributable to the Newark-Plainfield line.

Facilities: Authority facilities comprise: (1) air terminals comprising John F. Kennedy International Airport, La Guardia Airport, Newark International Airport, and Teterboro Airport; (2) toll bridge and tunnels comprising the George Washington Bridge, Lincoln Tunnel, Holland Tunnel, Goethals Bridge, Bayonne Bridge, Outerbridge Crossing; (3) marine terminal facilities comprising Port Newark, Elizabeth Marine Terminal, Erie Basin Marine Terminal, Hoboken Marine Terminal, Brooklyn Marine Terminal, Columbia Street Marine Terminal, New York City Passenger Ship Terminal (dedicated 11-23-74); (4)

Plaintiff's Supplemental Exhibit F

World Trade Center; (5) PATH rail transit system; (6) other facilities comprising the Bus Terminal, George Washington Bridge Bus Station, Journal Square Transportation Center, Newark Union Motor Truck Terminal, New York Union Motor Truck Terminal, Downtown Heliport, West 30th Street Heliport.

Expansion program: (1) Regarding rail transportation and PATH, the off-street bus terminal at Journal Square Transportation Center in Jersey City opened in spring 1975, the Authority in 1974 applied for Federal funding for a 17.5-mile extension of PATH from its Newark terminus to Plainfield via Newark International and Elizabeth, and continued design and planning for direct rail service to Penn Station for Erie-Lackawanna commuter trains; (2) various air terminal projects at Kennedy International including new air cargo facilities. At Newark International's Terminal C construction originally scheduled for 1976 completion was deferred for 3 years and the north terminal is currently being remodeled for international traffic and Federal inspection. At Kennedy International, basic tenant leases of 1953 expired 9-30-74 and were extended to March 1976 to permit flexibility in lease negotiations; (3) expansion of the Manhattan bus terminal is planned; (4) World Trade Center, continued occupancy is anticipated with Authority reporting a working population of approximately 28,000 by end of 1974; a 20-story and 800-room hotel is expected to be built on the Center's site to be financed by private investors; (5) marine terminals, new passenger ship terminal is operated by the Authority under 20-year lease agreement with New York City; completion in 1974 of containership facilities at Elizabeth; expansion of container terminals at Port Newark; City-Authority agreement of 1974 provides for Authority construction of a con-

Plaintiff's Supplemental Exhibit F

tainer terminal in Red Hook section of Brooklyn; (6) planning for rail access project to Kennedy International from Manhattan.

Operations: The Authority's transportation facilities are important, and, like comparable facilities elsewhere, are subject to the same factors that can both favorably and unfavorably affect their usage. The commercial airports are important in the nation; FAA data for the 12 months through 6-30-74 reveals that Kennedy International recorded 305,756 air carrier operations, ranking it 4th in the Nation, La Guardia with 265,316 was ranked 6th, and Newark with 150,088 was 16th. Effects of higher air fares, the energy crisis, and recession affected air activity; domestic air passengers of 29.6 million were down 2.6% and international passengers of 10.7 million were down 9.3%. Kennedy International in 1974 accounted for 40.3% of total plant movements and 50.1% of passenger. Toll bridge and tunnel traffic in 1974 was 12.8% commercial, with George Washington Bridge accounting for 47.8% of total and Lincoln Tunnel for 20.7%. Toll revenues in 1974 accounted for 19.6% of total Authority operating revenues. At the marine terminals, those in New Jersey accounted for 58.1% of ship arrivals and 84.2% of general cargo tonnage.

Current Results: Revenues continue to be generated from all facilities sufficient to meet all requirements with a margin to spare. In 1974, current expenses rose at a lower rate than the increase in gross revenues, producing a 14.0% rise in net revenues. Debt service coverage narrowed, due to the inclusion in debt service of $200,000,000 of consolidated bonds issued during 1973. Balance sheet data reflect the growth of fixed assets, the retirement of debt, and the maintenance of reserves at required levels;

Plaintiff's Supplemental Exhibit F

reserves included $173.4 million in the general reserve and $46.8 million in the consolidated bond reserve. At the end of 1974, completed construction aggregated almost $3.0 billion, and comprised $1.1 billion for all the airports, $650 million for the Trade Center, $515 million for all the tunnels and bridges, $514 million for all the marine, bus, and truck terminals, and $185 million for rail facilities. Earnings for transportation projects should be aided by the higher bridge and tunnel tolls effective 5-5-75.

Historical key ratios:

	1972	1973	1974
Operating ratio (%)	62.2	63.3	62.0
Net take-down (%)	41.1	39.8	41.3
Interest coverage	3.61	3.16	2.73
Avg. annual debt sv. coverage	1.23	1.36	1.55
Interest safety margin (%)	29.9	27.3	26.2

Bonded Debt: At the end of 1974, the Authority had outstanding a total of $1,700,504,000 bonds, of which $1,668,584,000 represent 40 series of Consolidated Bonds issued since 1952, and the balance of the Authority's General and Refunding, Marine Terminal and Air Terminal bonds for which funds have been held in trust since the end of 1970 for their full and complete payment. Consolidated Bonds are payable from the net revenues of the Authority's facilities. Maximum annual principal and interest on outstanding bonds totals $118,398,000 in 1986, which is covered 1.51 times by net revenues in 1974. Also outstanding at the end of 1974 were $255,000,000 bank loans, due 1975 through 1979 and payable from revenue but subordinate to the payment of the Authority's bonds.

Plaintiff's Supplemental Exhibit F

	Years Ended December 31			% Change	
	1972	1973	1974	1973	1974
Operating Data:					
Toll bridges & tunnels:					
Traffic (000)	159,476	164,344	158,575	3.1	– 3.5
Toll revenue (000)	$ 80,620	$ 83,178	$ 80,613	3.2	– 3.1
Commercial airports:					
Plane movements	860,000	872,000	768,000	1.4	–11.9
Total passengers (000)	41,713	42,252	40,371	1.3	– 4.5
PATH passengers (000)	40,282	30,040a	37,700	–25.4	25.5
All marine terminals:					
Ship arrivals	3,979	3,877	3,601	– 2.6	– 7.1
General cargo, long tons (000)	12,183	12,617	13,405	3.6	6.2
Bus terminal passengers (000)		64,000	60,000		– 6.3

a. PATH on strike from 4-1-73 to 6-3-73.

	Years Ended December 31			% Change	
	1972	1973	1974	1973	1974
Financial results ($ in 000):					
Gross operating revenues	$319,835	$373,497	$410,412	16.8	9.9
Gross revenue and income	339,618	393,551	433,459	15.9	10.1
Oper. & maint. expenses	199,161	236,464	254,294	18.7	7.5
Net revenues	140,457	157,087	179,165	11.8	14.0
Interest on funded debt	38,856	49,729	65,562	28.0	31.8
Interest & mandatory redempt.	63,358	75,776	94,265	19.6	24.4
Times covered	2.22	2.07	1.90		
Safety margin (%)	22.7	20.7	19.6		

Plaintiff's Supplemental Exhibit F

	Years Ended December 31			% Change	
	1972	1973	1974	1973	1974
Balance sheet data ($ in 000):					
Invested in facilities	$3,047,507	$3,272,913	$3,447,056	7.4	5.3
Reserve balances:					
General reserve	156,681	173,487	173,487	10.7	0.0
Special reserve (a)	17,551	16,047	13,898	– 8.6	–13.4
Air terminal reserve(a)	27,489	22,664	18,660	–17.5	–17.7
Marine terminal reserve(a)	3,280	2,634	2,212	–19.7	–16.0
Consolidated bond reserve	7,101	21,932	46,800	208.9	113.4
Total reserves	212,102	236,764	255,057	11.8	7.5
Bonded debt:					
General & refunding bonds	15,852	14,586	12,658	–8.0	–13.2
Air terminal bonds	24,641	20,577	17,203	–16.5	–16.4
Marine terminal bonds	2,983	2,417	2,059	–19.0	–14.8
Consolidated bond	1,523,344	1,697,287	1,668,584	11.4	–1.7
Total bonded debt	1,566,810	1,734,867	1,700,504	10.6	–2.0
Bank loans	230,000	295,000	255,000	28.3	–13.6
Total long-term debt	1,796,810	2,029,867	1,955,504	13.0	–3.7

(a) Reserve funds maintained in trust for these bonds.

Plaintiff's Supplemental Exhibit F

MOODY'S INVESTORS SERVICE, INC.

MUNICIPAL CREDIT REPORT
PORT AUTHORITY OF NEW YORK AND NEW JERSEY

May 22, 1975

Ratings:	Consolidated Bonds	: A (confirmed)
	General and Refunding Bonds	: Aa (confirmed)
	Marine Terminal Bonds	: Aa (confirmed)
	Air Terminal Bonds	: Aa (confirmed)

Summary and Opinion: This bi-state agency maintains earning capability to meet requirements and to service its Consolidated Bonds within reasonable margins. Net revenues from the airports, marine terminals, and toll bridges and tunnels more than offset deficits of the PATH commuter rail system and the World Trade Center at this time.

The Superior Court in New Jersey has upheld New Jersey legislation that repealed the 1962 covenant restricting Authority involvement in deficit mass transit operations. This decision is a matter of deep concern to bondholders generally, and the decision will be appealed. The effect on the Authority cannot be determined at this time in absence of a definite plan for financing mass transit projects and facilities deemed to be non-self-sustaining. In the meantime, earnings of the present facilities are good, reserves for debt service continue strong, and recent toll increases have further strengthened financial position at this time.

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Plaintiff's Supplemental Exhibit F

the George Washington Bridge, Lincoln Tunnel, Holland Tunnel, Goethals Bridge, Bayonne Bridge, Outerbridge Crossing; (3) marine terminal facilities comprising Port Newark, Elizabeth Marine Terminal, Erie Basin Marine Terminal, Hoboken Marine Terminal, Brooklyn Marine Terminal, Columbia Street Marine Terminal, New York City Passenger Ship Terminal (dedicated 11-23-74); (4) World Trade Center; (5) PATH rail transit system; (6) other facilities comprising the Bus Terminal, George Washington Bridge Bus Station, Journal Square Transportation Center, Newark Union Motor Truck Terminal, New York Union Motor Truck Terminal, Downtown Heliport, West 30th Street Heliport.

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Plaintiff's Supplemental Exhibit F

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Plaintiff's Supplemental Exhibit F

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Gross operating revenues	$319,835	$373,497	$410,412	16.8	9.9
Gross revenue & income	339,618	393,551	433,459	15.9	10.1
Oper. & maint. expenses	199,161	236,464	254,294	18.7	7.5
Net revenues	140,457	157,087	179,165	11.8	14.0
Interest on funded debt	38,856	49,729	65,562	28.0	31.8
Interest & mandatory redempt.	63,358	75,776	94,265	19.6	24.4
Times covered	2.22	2.07	1.90		
Safety margin (%)	22.7	20.7	19.6		

Plaintiff's Supplemental Exhibit F

	12-31-72	12-31-73	12-31-74	% Change 1973	% Change 1974
Balance sheet data ($ in 000):					
Invested in facilities	$3,047,507	$3,272,913	$3,447,056	7.4	5.3
Reserve balances:					
General reserve	156,681	173,487	173,487	10.7	0.0
Special reserve (a)	17,551	16,047	13,898	- 8.6	-13.4
Air terminal reserve(a)	27,489	22,664	18,660	-17.5	-17.7
Marine terminal reserve(a)	3,280	2,634	2,212	-19.7	-16.0
Consolidated bond reserve	7,101	21,932	46,800	208.9	113.4
Total reserves	212,102	236,764	255,057	11.8	7.6
Bonded debt:					
General & refunding bonds	15,852	14,586	12,658	-8.0	-13.2
Air terminal bonds	24,641	20,577	17,203	-16.5	-16.4
Marine terminal bonds	2,983	2,417	2,059	-19.0	-14.8
Consolidated bond	1,523,344	1,697,287	1,668,584	11.4	-1.7
Total bonded debt	1,566,810	1,734,867	1,700,504	10.6	-2.0
Bank loans	230,000	295,000	255,000	28.3	-13.6
Total long-term debt	1,796,810	2,029,867	1,955,504	13.0	-3.7

(a) Reserve funds maintained in trust for these bonds.

Plaintiff's Supplemental Exhibit G

MOODY'S REPORT
RE STATE OF NEW JERSEY
DATED JUNE 23, 1975

MOODY'S INVESTORS SERVICE, INC.
MUNICIPAL CREDIT REPORT
©MOODY'S INVESTORS SERVICE, INC.

June 23, 1975

STATE OF NEW JERSEY

Rating: Aa (revised from Aaa)

New Jersey's budget for 1975-76 as adopted includes a sizeable deficit, which is not covered. The State also is mandated by its Supreme Court to establish a new school financing plan. The existing school financing system has been ruled unconstitutional. The Court's initially imposed deadline for school finance reform has passed and has been extended in recognition of the size of the problem.

The State's need for a broad-based tax has been debated for many years. Against this has been put its levels of services, which critics have maintained are substantially below standards provided by other high-income states. The plight of localities in the State, has been cited as a need for improvement of the revenue system.

In a sense, these criticisms are irrelevant to the bondholder. The State's method of finance and the levels of service it provides are the concern of the State and its voters. The bondholder does have an interest in the maintenance of a functioning entity that will continue itself.

It is clear that the State has pressing revenue needs for both its immediate purposes and for school financing. By any measure New Jersey is one of the nation's wealthiest

Plaintiff's Supplemental Exhibit G

states. But it has difficult problems right now. Unemployment is high, the economy is temporarily stagnant, and tax revenues are showing little or no growth.

At the same time the State has taken actions which are puzzling to bondholders. It committed itself to a deficiency makeup for the capital reserve fund of the New Jersey Sports and Exposition Authority, a "moral obligation" type arrangement which very likely will call on the State. And the State through its legal machinery repealed a covenant it had authorized with bondholders in connection with bond issues of the Port Authority of New York and New Jersey. As a matter of logic and as a matter of concern to the investment community, these actions certainly appear contradictory and raise a further question. Does the State follow any kind of consistent policy.

The level of State debt is not high. Good security is provided for the bonds. Top bond ratings reflect other factors, however, the current policy of the State in facing its revenue problems and its general bonding program is open to serious doubt about its ability to be decisive in face of need. Wealth which cannot be tapped to meet present needs raises doubt about its usage in future debt servicing. The extension of current financial difficulties into capital financial problems is an inevitable step, if the current financial difficulties are not solved when they arise.

Because of our doubts about the decision making process in the State at this time, its ability to act decisively to solve visible problems, we can no longer assign it our top rating. All of the State's obligations are revised to *Aa*.

• • •

Excerpts From The Port Authority of N. Y. & N. J.

1975 Annual Report

• • •

"THE PORT AUTHORITY YEAR

Economic viability of the Port District and further development of public transportation facilities in the region were the central themes of Port Authority activity in 1975.

Despite the New York-New Jersey region's deep fiscal difficulties, complicated by a declining population, uncertain employment forecasts and unanswered questions of federal financing, the Port Authority dedicated one major mass transportation project this year and started construction on another, one on each side of the Hudson River. The PATH Journal Square Transportation Center, dedicated October 16, is now in full operation in Jersey City as one of the largest public transportation facilities in the nation and as a national prototype of a bus-rail-car multimodal project. In midtown New York, at the Port Authority Bus Terminal, celebrating its 25th year as the busiest mass transportation center in the world, a ceremony on September 11 marked the start of construction to modernize and extend it. The new unified structure will increase capacity by approximately 50 percent.

The Port Authority also continued its program of improving its air, marine, bus and truck terminals, and its public transportation and world trade facilities that already serve the New York-New Jersey Port District.

To finance the bus terminal construction and to prepare to finance other mass transportation projects, as well as to weight the individual traveler's choice in favor of public transportation, the Port Authority made an historical revision to one of its key revenue sources. On May 5, for the first time in 48 years, the tolls on its tunnels and bridges

were increased by approximately 50 percent for all except buses and those who form carpools. (At year-end, a proceeding was pending before the Federal Highway Administrator to determine the reasonableness and justness of the new toll schedule under applicable federal law.)

The major rail transportation project to extend PATH into the Plainfield Corridor, for which the State of New Jersey and PATH had submitted a grant application for $278 million in federal aid, was rejected "without prejudice" by the Urban Mass Transportation Administrator on December 19. By year end the New Jersey Department of Transportation and the Port Authority were investigating new proposals and courses of action to achieve the necessary federal funding.

Federal funding is also necessary for the rail improvement program authorized by the states in 1972 and 1973 to provide direct rail service to Penn Station, New York by connecting Erie Lackawanna Railway tracks to the Penn Central's. Planning, design and engineering studies for the project, conducted by the Port Authority, progressed toward completion in 1975.

No formal applications for federal aid had yet been made for the Kennedy International Airport rail link to Manhattan, pending a full financial determination of how the project can be supported. In the meantime, contract plans and specifications have been completed for all off-airport work and for cross-airport rail alignment into the airport's central terminal area. Functional planning and preliminary engineering design have also been completed for Penn Station, New York, and for the airport's rail terminal.

The Port Authority also sought low capital intensive methods of achieving improvements to existing transportation facilities, in accordance with national goals. In

the past year the Port Authority engaged in the promotion of carpooling through computer matching, completed plans for permanent traffic controls on the Exclusive Bus Lane and organized the expansion of the Staggered Work Hours Program where applicable in the Port District.

The Port Authority worked throughout the year with the federal agencies, ConRail and others involved in the reorganization of the northeast railroads to formulate operating plans favorable to the Port District and to ensure meaningful rail competition in the region.

To contribute to the solution of regional problems, the Port Authority participated in the activities of such boards and commissions as:

> ... The New Jersey Capital Needs Commission to evaluate the long-term capital needs of the state.
>
> ... The New Jersey Economic Recovery Commission, concerned with recommendations for stimulating the state economy.
>
> ... New York's Task Force on Unemployment to develop methods of reducing the state's unemployment.
>
> ... The Staggered Work Hours Program which, primarily with Port Authority initiative, was developed in Lower Manhattan and expanded into midtown Manhattan.

Federal, state and municipal governments sought the Port Authority this year in increasing recognition of its technical planning and engineering assistance as a major community resource:

> ... At the request of New York City, in anticipation of the introduction of new passenger ferries, the Port Authority proposed ways to improve the commuter passenger flow through the Staten Island-Manhattan ferry

terminals, short of the costly alternative of reconstruction.

. . . The Port Authority is preparing the environmental impact statement and engineering design work for the proposed Liberty State Park, at the request of the New Jersey Environmental Protection Agency.

. . . The Federal Aviation Administration and the Federal Maritime Administration have enlisted Port Authority assistance to determine for the former the effects of reduced nighttime operations if they were to be imposed at airports and, for the latter, to assess the impact of ports on the economy and commerce of the nation.

. . . In cooperation with the Hackensack Meadowlands Development Commission, the Port Authority is preparing a report on the transportation facilities needed to connect the Hackensack Meadowlands with Manhattan and other regional centers."

• • •

"PATH

The Journal Square Transportation Center, situated on an eight-acre site in the heart of Jersey City and now serving 74,000 PATH and bus passengers each weekday, comprises a new PATH rail rapid transit station with capacity for longer trains, an off-street bus station, an auto parking garage, the PATH Administration Building and a new Operations Control Center for the PATH rail system. The new bus station, operated by the Terminals Department, was opened in April, and the two-level parking garage above the bus station, with 618 parking spaces for commuters and shoppers, opened in September. Portions of the new PATH station had been opened in 1973 and the PATH Administration Building in 1974.

Built by PATH at a cost of $87 million, over $39 million of which constitutes grants from the Urban Mass Transportation Administration, the center was designed as the focal point of Jersey City's plan for the revitalization of the Journal Square commercial area. An open house held October 18 in celebration of the center's dedication brought an estimated 10,000 people from the surrounding community and the wish of Jersey City's mayor that a municipal services fair, held in the center in conjunction with the dedication, become an annual event. The center's plaza has already been used as a site for public assembly.

PATH carried over 38 million passengers in 1975, representing over 70 percent of New Jersey passengers entering New York City by rail.

PATH's operation was conducted with an on-time system record of 97.6 percent for the year.

The Port Authority has now invested over $251 million in the acquisition, rehabilitation and modernization of the 14-mile rail system. Cumulative operating deficits, calculated in accordance with interstate Commerce Commission regulations, totaled nearly $220 million since 1962."

• • •

"TERMINALS

Construction began in September on a four-year $160 million project to expand the Port Authority Bus Terminal by about 50 percent to meet a traffic volume now exceeding 200,000 commuter and long-distance bus passengers a day, arriving and departing on 7,000 buses."

• • •

"PORT AUTHORITY FINANCE

Basic Policies and Financial Structure

The States of New Jersey and New York directed the Port Authority . . . "to proceed with the development of the Port of New York . . . as rapidly as may be economically practicable . . ." The Port Authority, however, may not levy taxes or assessments or pledge the credit of either state or any municipality. Its program of public works was to be supported and financed by the private sector, and to this end the two states pledged their "cordial cooperation . . . in the encouragement of the investment of capital . . ." Over the years nearly $4 billion of Port Authority obligations have been purchased by investors, of which $1.8 billion was outstanding at December 31, 1975.

The statutes establishing the General Reserve Fund of the Port Authority provide for the pooling of revenues to the end that older facilities with established earning power can aid new projects during development periods until they reach their anticipated point of self-support. These statutes provide for the utilization of available net revenues to maintain the General Reserve Fund at the prescribed amount of 10 percent of the total par value of the Port Authority's outstanding bonds.

The Port Authority's long-established policy is to retire debt as rapidly as sound financial management permits and to maintain, at year-end, a combined amount in its reserve funds, including reserve funds in trust, equal to at least the amount of the next two years' mandatory bonded debt service. Acceleration of debt retirement before mandatory dates may be accomplished out of the General Reserve Fund only to the extent that reserve funds exceed the ensuing two years' mandatory bonded debt service.

Bonds for an additional facility cannot be issued with a pledge of the General Reserve Fund unless the Port Authority Commissioners certify to investors that the issuance of the bonds or that such pledge will not materially impair the sound credit standing of the Port Authority, the investment status of its bonds, or its ability to fulfill its commitments and undertakings.

In 1974, the Legislatures of New York and New Jersey repealed a statutory covenant with holders of affected Port Authority bonds which permitted deficit financing of passenger railroad facilities in addition to the Hudson Tubes (Port Authority Trans-Hudson [PATH] System) only within specified financial limits. The covenant was originally adopted in 1962 as part of the statutes authorizing Port Authority acquisition of the interstate Hudson and Manhattan Railroad. In 1973, the two states had enacted legislation to preclude application of the statutory covenant to the holders of obligations issued by the Port Authority after May 10, 1973.

In April 1974, the United States Trust Company of New York instituted litigation in New Jersey as Trustee for the 40th and 41st Series of the Port Authority's Consolidated Bonds, as the holder of a significant amount of outstanding obligations of the Port Authority, and as a class representative on behalf of the holders of all outstanding Consolidated Bonds and all others similarly situated against the State of New Jersey and its Governor and Attorney General seeking a declaratory judgment that the action taken by the states in 1974 to repeal the 1962 statutory covenant violates the federal and state Constitutions. This action was consolidated with another pending action in New Jersey instituted by private parties seeking to invalidate the statutory covenant.

Excerpts From The 1975 Port Authority Annual Report

On February 25, 1976, the New Jersey Supreme Court affirmed the decision of the New Jersey Superior Court rendered in May 1975, which had decided that the repeal was a valid exercise of the police power of the states and not a violation of the contract clauses of the United States Constitution or the Constitution of the State of New Jersey. The United States Trust Company has announced that it plans to appeal to the United States Supreme Court from the decision of the Supreme Court of New Jersey."

• • •

"RESERVE FUNDS

At year-end 1975, the General Reserve Fund balance was $176,457,000 and continued to meet the prescribed statutory amount, while the Consolidated Bond Reserve Fund totaled $62,409,000.

These balances, together with other reserve fund balances in trust totaling $28,100,000, continued to meet the long-established policy of maintaining total reserve funds in an amount equal to at least the next two years' mandatory debt service on bonded debt (excluding scheduled debt service on outstanding bank loans as detailed in Note C, Page 29)."

• • •

Excerpts From The 1975 Port Authority Annual Report

STATEMENT OF INCOME

	Year Ended December 31,	
	1975	1974*
	(In Thousands)	
Gross Operating Revenues	$458,406	$410,412
Operating Expenses (Note E)	(289,138)	(252,037)
Depreciation	(83,281)	(78,214)
Income from Operations	85,987	80,161
Financial Income and Expense:		
Income on investments	20,965	21,228
Gain on purchase of Port Authority bonds	8,283	4,880
Security valuation adjustment	2,453	(3,061)
Interest on bonded debt	(72,249)	(66,390)
Interest on bank loans	(8,464)	(9,119)
Net Income	$ 36,975	$ 27,699

* Restated, See Note E

Excerpts From The 1975 Port Authority Annual Report

STATEMENT OF CHANGES IN FINANCIAL POSITION

	Year Ended December 31, 1975	1974*
	(In Thousands)	
Funds provided from:		
Net Income	$ 36,975	$ 27,699
Depreciation	83,281	78,214
Funds provided by operations	120,256	105,913
Consolidated Notes	100,000	—
Government Contributions in Aid of Construction	19,105	18,606
Net Change in Other Assets and Deferred Credits	21,753	—
Total Funds Provided	261,114	124,519
Funds applied to:		
Cost of Facilities	138,548	174,108
Retirement of Bonded Debt	35,930	34,363
Repayment of Bank Loans	55,000	40,000
Net Change in Other Assets and Deferred Credits	—	16,119
Net Reduction in Accounts Payable and Other Liabilities	3,912	8,754
Planning Expenditures Applicable to Future Years	2,493	4,238
Total Funds Applied	235,883	277,582
Net Increase (Decrease) in Cash and Investments	$ 25,231	$(153,063)

* Restated, See Note E

See Notes to Financial Statements

Excerpts From The 1975 Port Authority Annual Report

STATEMENT OF FINANCIAL POSITION

	December 31, 1975				December 31, 1974*
	Operating Fund	Capital Fund	Reserve Funds	Combined Total	Combined Total
	(In Thousands)				
Assets					
Facilities, at Cost (Note B)	$ —	$3,527,430	$ —	$3,527,430	$3,388,901
Less Accumulated Depreciation	—	751,002	—	751,002	667,740
Facilities, Net	—	2,776,428	—	2,776,428	2,721,161
Investment in Securities (Schedule D)	18,796	29,289	264,297	312,382	262,877
Cash and Time Deposits	24,971	38,898	2,669	66,538	90,812
Other Assets	91,250	2,349	—	93,599	111,550
Total Assets	135,017	2,846,964	266,966	3,248,947	3,186,400
Liabilities					
Bonded Debt (Schedule E)	—	1,764,574	—	1,764,574	1,700,504
Bank Loans Payable (Note C)	—	200,000	—	200,000	255,000
Accounts Payable and Other Liabilities	111,984	33,632	—	145,616	149,528
Deferred Credits to income	7,839	—	—	7,839	6,530
Total Liabilities	119,823	1,998,206	—	2,118,029	2,111,562
Net Assets	$ 15,194	$ 848,758	$266,966	$1,130,918	$1,074,838

*Restated, See Note E

Excerpts From The 1975 Port Authority Annual Report

STATEMENT OF CHANGES IN NET ASSETS

	Year Ended December 31, 1975				Year Ended December 31, 1974*
	Operating Fund	Capital Fund	Reserve Funds	Combined Total	Combined Total
	(In Thousands)				
Balance at January 1 ..	$ 12,777	$ 807,004	$255,057	$1,074,838	$1,028,533
Contributions from Federal and State Agencies in Aid of Construction	—	19,105	—	19,105	18,606
Distribution of Net Income:					
Capital Fund Balance Less Depreciation on Assets Acquired with Government Contributions	—	26,344 (3,695)	—	22,649	7,149
Self-Insurance	2,417	—	—	2,417	2,257
Reserves	—	—	11,909	11,909	18,293
Net Income				36,975	27,699
Balance at December 31	$ 15,194	$ 848,758	$266,966	$1,130,918	$1,074,838

*Restated, See Note E

See Notes to Financial Statements

* * *

Excerpts From The 1975 Port Authority Annual Report

SCHEDULE A—REVENUES AND RESERVES

(In accordance with Port Authority bond resolutions)

	Year Ended December 31,			
	1975			1974*
	Operating Fund	Reserve Funds Schedule C	Combined Total	Combined Total
	(In Thousands)			
Gross Operating Revenues	$458,406	$ —	$458,406	$410,412
Operating Expenses	289,138	—	289,138	252,037
Net Operating Revenues	169,268	—	169,268	158,375
Financial Income				
Income on investments (includes gain of $8,283,000 in 1975 and $4,880,000 in 1974 on purchase of Port Authority bonds)	4,091	25,157	29,248	26,108
Security valuation adjustment	62	2,391	2,453	(3,061)
Net Revenues Available for Debt Service and Reserves	173,421	27,548	200,969	181,422
Debt Service				
Interest on bonded debt....	71,552	697	72,249	66,390
Serial maturities and sinking fund retirements	30,055	5,875	35,930	34,363
Interest on bank loans	—	8,464	8,464	9,119
Payment of bank loans	—	55,000	55,000	40,000
Total Debt Service	101,607	70,036	171,643	149,872
Appropriation to Invested in Facilities	—	15,000	15,000	11,000
Appropriation to Self-Insurance	—	2,417	2,417	2,257
Transfers to Reserves	$(71,814)	71,814	—	—
Net Increase in Reserves		11,909	11,909	18,293
Reserve Balances—Beginning of Year		255,057	255,057	236,764
Reserve Balances—End of Year (Schedule C)....		$266,966	$266,966	$255,057

* Restated, See Note E

See Notes to Financial Statements

Excerpts From The 1975 Port Authority Annual Report

Schedule F

BONDED DEBT AMORTIZATION 1976-2008

December 31, 1975 (In Thousands)

	Debt Service Total All Issues			Amortization			
	Par Value $1,764,574						
Year	Total	Interest	Amortization	Consolidated Bonds	General and Refunding Bonds	Air Terminal Bonds	Marine Terminal Bonds
1976	$121,903	$85,786	$36,117	$29,294	$1,033	$4,955	$835
1977	121,197	84,723	36,474	30,244	1,194	4,519	517

See Notes to Financial Statements

Excerpts From The 1975 Port Authority Annual Report

Schedule G

SELECTED FINANCIAL DATA

(In accordance with Port Authority bond resolutions)

	1975	1974*	1973*
		(In Thousands)	
REVENUES AND EXPENSES			
Gross Operating Revenues	$ 458,406	$ 410,412	$ 373,497
Operating Expenses	289,138	252,037	234,475
Net Operating Revenues	169,268	158,375	139,022
Income on Investments	20,965	21,228	16,806
Gain on Purchase of Port Authority Bonds	8,283	4,880	6,809
Security Valuation Adjustment	2,453	(3,061)	(3,591)
Net Revenues Available for Debt Service and Reserves	200,969	181,422	159,046
DEBT SERVICE—OPERATIONS			
Interest on Bonded Debt	(71,552)	(65,562)	(49,729)
Times, Interest Earned	2.81	2.77	3.20
Serial Maturities and Sinking Fund Retirements	(30,055)	(28,703)	(26,047)
Times, Debt Service Earned	1.98	1.92	2.10
DEBT SERVICE—RESERVES			
Debt Service on Bonds Secured by Trusts	(6,572)	(6,488)	(6,874)
Interest on Bank Loans	(8,464)	(9,119)	(6,775)
Bank Loan Payments	(55,000)	(40,000)	(35,000)
Appropriation to Invested in Facilities—Reserves	(15,000)	(11,000)	(8,000)
Appropriation to Self-Insurance —Reserves	(2,417)	(2,257)	(1,959)
Net Increase in Reserves	11,909	18,293	24,662
RESERVE BALANCES			
Beginning of Year	255,057	236,764	212,102
End of Year	$ 266,966	$ 255,057	$ 236,764

Excerpts From The 1975 Port Authority Annual Report

	1975	1974*	1973*
		(In Thousands)	
Represented By:			
General Reserve	$ 176,457	$ 173,487	$ 173,487
Special Reserve (A)	12,767	13,898	16,047
Air Terminal Reserve (A)	13,576	18,660	22,664
Marine Terminal Reserve (A)	1,757	2,212	2,634
Consolidated Bond Reserve	62,409	46,800	21,932
Total	$ 266,966	$ 255,057	$ 236,764
DEBT—AT YEAR-END			
General and Refunding Bonds	$ 11,717	$ 12,658	$ 14,586
Air Terminal Bonds	12,671	17,203	20,577
Marine Terminal Bonds	1,657	2,059	2,417
Consolidated Bonds and Notes	1,738,529	1,668,584	1,697,287
Total Bonded Debt	1,764,574	1,700,504	1,734,867
Bank Loans	200,000	255,000	295,000
Total	$1,964,574	$1,955,504	$2,029,867
INVESTED IN FACILITIES—AT YEAR-END	$3,581,037	$3,442,489	$3,268,381
DEBT RETIREMENT THROUGH REVENUES AND RESERVES			
Annual	$ 90,930	$ 74,363	$ 66,943
Cumulative	$1,426,650	$1,335,720	$1,261,357

NOTE: These combined totals are presented for general information purposes only and are not intended to reflect specific applications of the revenues and reserves of the Port Authority, which are governed by statutes and its bond resolutions.

(A) Reserve Funds maintained in Trust since December 31, 1970. See Note H of Notes to Financial Statements.

* Restated, See Note E.

See Notes to Financial Statements

Excerpts From The Port Authority of New York and New Jersey

OFFICIAL STATEMENT

$100,000,000

CONSOLIDATED BONDS

Forty-second Series, Due 2011

(First Installment)

The date of this Official Statement is July 8, 1976

THE PORT AUTHORITY OF NY & NJ

OFFICIAL STATEMENT

"TO PROSPECTIVE PURCHASERS:

The Port Authority of New York and New Jersey is offering for sale, upon an all or none basis, $100,000,000 of its Consolidated Bonds of the Forty-second Series, First Installment, Due 2011. The purpose of this Official Statement is to describe the bonds being presently offered and to give other pertinent data with respect to the Authority and its finances.

The Present Offering

The following is a summary description of the bonds being presently offered for sale.

Series: Consolidated Bonds, Forty-second Series, Due 2011.

Principal Amount: $100,000,000.

Dated: July 15, 1976.

Due: July 15, 2011.

Excerpts From The Port Authority of New York and New Jersey Official Statement

Purposes: The proceeds shall be used for purposes of capital expenditures in connection with the Authority's facilities, as follows: bridges and tunnels; docks and wharves; airport terminal and service buildings, roadways, runways, taxiways and fuel and utility service and distribution systems; bus terminals; the Hudson Tubes portion of the Port Authority Trans-Hudson system; parking facilities; storage or training facilities directly related to any of the foregoing; and the World Trade Center; and for refunding all or any part of Consolidated Notes, Series BB, previously issued; provided, however, no more than 10% of the amount of such proceeds not expended to refund any Consolidated Notes, Series BB, shall be used for the purpose of capital expenditures in connection with the World Trade Center and those integral portions of an extension to the Port Authority Bus Terminal related to any future construction above such extension." (p.1) • • •

"In 1962 the two States authorized the Port Authority to proceed with the acquisition, rehabilitation and operation of the Hudson Tubes, consisting of the properties formerly operated by the Hudson & Manhattan Railroad Company, and certain extensions to the Hudson Tubes; also the States authorized a new facility of commerce known as the World Trade Center. These statutes were amended during 1972-1974 to authorize the Authority to effectuate an extension of the Hudson Tubes from the City of Newark to the vicinity of the City of Plainfield in New Jersey and to undertake a series of New Jersey rail improvements with respect to direct Erie-Lackawanna railroad service into Pennsylvania Station in New York City. The amendments also provided for the repeal of the provisions of the statutory covenant contained in the 1962 legislation limiting the Port Authority's financial participation in additional deficit passenger

Excerpts From The Port Authority of New York and New Jersey Official Statement

railroad facilities. (See pp. 9-10, 17-22.) Neither Consolidated Bonds, Forty-second Series, maturing on June 1, 2011, nor any prior issue of Authority obligations provide proceeds for additional deficit passenger railroad facilities. No representation is made herein as to the application of proceeds of future issues of Authority obligations.

The Authority raises the necessary funds for the construction or acquisition of its facilities upon the basis of its own credit, its reserve funds and its future revenues. In the past such funds have been supplemented in certain cases by state and federal contributions. The Authority has no power to levy taxes or assessments. Its bonds and other obligations are not obligations of the two States or of either of them, and (except for State Guaranteed Commuter Car Bonds described on p. 23) they are not guaranteed by the States or either of them. The revenues of the Authority are derived principally from the tolls, fares, landing, dockage, rental and other charges for the use of and privileges at its various facilities hereinafter described." (p. 4) • • •

"TUNNELS AND BRIDGES

The Port Authority operates all the interstate vehicular tunnels and bridges in the Port of New York District. Each of the tunnels and bridges accommodates both east-bound and west-bound traffic. For purposes of efficiency and economy in collection, tolls are collected from east-bound traffic only.

Effective May 5, 1975 the Port Authority revised its toll schedules for its six interstate vehicular crossings. The revisions included a general 50% increase in tolls for automobiles, trucks and tractor trailers, a 100% increase in the cost of 30-day commutation tickets, the institution of

special car pool ticket books which provide for a two-thirds discount from the new passenger car rate, and the elimination of ticket books previously good for two years and which provided for a 20% discount; the sale of toll scrip was continued at the 10% discount and bus tolls were retained at the pre-existing rate. It is estimated that these revisions will result in additional toll revenues to the Authority of more than $40,000,000 per year. These increased toll revenues are expected to enhance the Authority's ability to undertake additional mass transportation projects as noted on page 22.

On April 25, 1975, after receiving complaints in accordance with the Federal Bridge Toll Procedural Rules of the United States Department of Transportation, the Federal Highway Administrator commenced an investigation which will include a public hearing to determine whether the toll increases on the Port Authority's four interstate bridges are just and reasonable within the meaning of Section 4 of the Federal Bridge Act of 1906. (See *"Rate Powers and Covenants"*, p. 29). On May 6, 1975, the Federal Highway Administrator served on the Authority a copy of a motion filed with the Administrator by one of the complainants for an order requiring the Authority during the pendency of the toll proceeding to create an escrow account for the receipt of revenue derived from the toll increase. On May 23, 1975, the Authority filed a memorandum in opposition to that motion, and the decision on the motion is still pending. The Authority has taken the position that such an escrow account is not necessary, desirable or authorized.

The Federal Highway Administration issued a Notice of Proposed Rule Making on July 18, 1975, to govern bridge toll review procedures which would require 90-day advance

notice of a proposed toll increase and would also require the escrow of all toll increase revenues upon the commencement of any proceeding to determine the justness and reasonableness of a toll increase." (pp. 5-6) • • •

"New Airport and Mass Transportation Legislation

During 1971-74, the Legislatures of New York and New Jersey enacted legislation (Ch. 474 and Ch. 475, Laws of N. Y. 1971; Ch. 1003, Laws of N. Y. 1972; Ch. 317 and Ch. 318, Laws of N. Y. 1973; Ch. 993, Laws of N. Y. 1974 and Ch. 245, Laws of N. J. 1971; Ch. 207 and Ch. 208, Laws of N.J. 1972; Ch. 25, Laws of N. J. 1974) amending the 1947 statutes providing for the regional development of air terminals by the Port Authority and amending the 1962 statutes providing for the financing and effectuation by the Port Authority of a port development project consisting of the Hudson Tubes, the Hudson Tubes extensions and the World Trade Center to provide, in addition, for mass transportation access to John F. Kennedy International and Newark International Airports.

The bi-State legislation specifically provides for the Port Authority to undertake separately, pursuant to the air terminal statutes, railroad lines (a) connecting Newark International Airport to existing rail and terminal facilities in the City of Newark, and (b) connecting John F. Kennedy International Airport to the main line of the Long Island Rail Road in the County of Queens, including a spur or branch to the Montauk line of the railroad in that County. The Authority is also specifically authorized to undertake in connection with each of the projects: (1) appropriate mass transportation terminal facilities at and within the two airports, (2) suitable offsite facilities for the accommodation of air passengers, baggage, mail, express, freight

and other users of the connecting facilities, and (3) such additional rail or other mass transportation, terminal, station, parking, storage and service facilities, including improvements to the railroad approaches at Pennsylvania Station and Jamaica Station in the City of New York in connection with the New York project, as operations may require.

The statutes which authorize rail access to John F. Kennedy International Airport and Newark International Airport each contain the following legislative finding:

> "Such mass transportation facilities can properly be regarded as constituting a part of each air terminal, the development of which should be the responsibility of those charged with the duties of air terminal development."

The statutes amended the definition of "air terminals" to provide that:

> "It shall also mean facilities providing access to an air terminal, consisting of rail, rapid transit or other forms of mass transportation which furnish a connection between the air terminal and other points in the port district, including appropriate mass transportation terminal facilities at and within the air terminal itself and suitable offsite facilities for the accommodation of air passengers, baggage, mail, express, freight and other users of the connecting facility."

A conclusive determination that facilities providing access to air terminals are legally part of such terminals as set forth in the foregoing findings of the legislation author-

izing rail access to John F. Kennedy and Newark International Airports and that rail access projects may be financed on such basis, would preclude, regardless of the outcome of the litigation referred to at pages 18-19 above, applicability to such financing of the provisions of the 1962 statutory covenant relating to the certification of the projects by the Port Authority as self-supporting thereunder.

The 1971-1974 legislation also authorizes the Port Authority to undertake as Hudson Tubes extensions passenger railroad facilities extending from Pennsylvania Station in the City of Newark over new rail transit lines or on or over the existing rail transit lines of other railroads, to the vicinity of the City of Plainfield in the State of New Jersey, including construction, reconstruction and improvement of necessary stations in and between the City of Newark and the vicinity of the City of Plainfield together with such additional rail or other mass transportation, terminal, station, parking, storage and service facilities as operations may require, including a connection to provide improved access to Newark International Airport if and to the extent such connection shall not be otherwise provided as air terminal facilities for the airport.

In October, 1974, a joint Task Force of the New Jersey Department of Transportation and the Port Authority was established at the request of the Urban Mass Transportation Administration of the U. S. Department of Transportation to study potential transit alternatives in the Newark-Plainfield corridor. The Task Force submitted an interim report on January 15, 1975 to Governor Brendan T. Byrne of New Jersey. The report assessed in detail without recommendation five transit alternatives in the Union County corridor, as well as various plans for transit access to Newark International Airport. Subsequently,

Governor Byrne announced his view that the Authority should proceed with an extension of the PATH system to Plainfield via the City of Elizabeth. On February 10, 1975, the final report was transmitted to the Urban Mass Transportation Administration.

The 1971-1974 legislation also authorizes the Authority to undertake certain improvements to passenger railroad lines connecting with the Hudson Tubes to provide direct rail service into Pennsylvania Station in the City of New York by the Erie Lackawanna railroad and to upgrade existing Penn Central rail service into the Station. The new improvements would include three direct track connections between the rail transit lines of the Erie Lackawanna and the Penn Central railroads in the vicinity of the Towns of Kearny and Secaucus in the State of New Jersey; replacement of a railroad bridge operated by Penn Central railroad across the Hackensack River; a new passenger railroad equipment yard in the vicinity of the Town of Secaucus; improvements to Penn Station in the City of New York and to its New Jersey approaches as necessary or desirable to improve operations and to increase train and passenger handling capacity; and such additional rail or other mass transportation, terminal, station, parking, storage and service facilities as operations may require. The railroads involved are now part of the Consolidated Rail Corporation (ConRail) system.

Finally, the legislation adopted in 1974 provides for the repeal of the statutory covenant between the two States and affected bondholders limiting the Port Authority's ability to participate in deficit passenger railroad projects. The legislation adopted in 1972-1973 had provided that the covenant shall not apply to the holders of bonds thereafter

issued by the Port Authority, including bonds of the present offering (see p. 17).

The Port Authority has undertaken active preparations to carry out the statutory programs. In May, 1975, it filed an application with the Urban Mass Transportation Administration of the U.S. Department of Transportation (UMTA) for $277,600,000 to pay part of the cost of extending the PATH system to Plainfield. The local contribution for this part of the project totals $69,400,000, to be funded by the Port Authority from the proceeds of a future bond issue or issues. It is contemplated that the Port Authority Trans-Hudson Corporation (PATH) would enter into an agreement with the State of New Jersey or a subsidiary corporation of the State under which PATH would acquire all necessary real and personal property out of the proceeds of Port Authority bond sales and UMTA grants, and lease said property to the State or its subsidiary. The amount of rent to be paid by the State would depend primarily on the outcome of the litigation relating to the repeal of the statutory covenant (see *"Litigation"*, pp. 18-19). That litigation will affect the extent to which the project or the State must cover debt service on the Port Authority's bonds issued for the project. Under these arrangements, PATH's operating responsibility would be limited to managing the operation of the property for so long as the State or its subsidiary paid to PATH any required rental and the annual net operating costs and expenses directly attributable to the Newark-Plainfield line. On December 19, 1975, the Urban Mass Transportation Administration rejected the application, as filed, for Federal aid for this project. This decision is currently being reconsidered by the Urban Mass Transportation Administration which has requested and received addi-

tional information with respect to this PATH extension and other New Jersey mass transportation projects.

After consultation with Governor Byrne of New Jersey and Governor Carey of New York, the Chairman of the Authority has noted that the revision to the Port Authority bridge and tunnel toll schedules which was effective May 5, 1975, is expected to result in additional revenues to the Authority of more than $40,000,000 per year (see *"Tunnels and Bridges"*, pp. 5-6) and that these additional revenues could support $400,000,000 in capital improvements in mass transportation projects authorized for Port Authority participation; $160,000,000 allocated to the extension of the Port Authority Bus Terminal now under construction (see pp. 8-9), with the remaining $240,000,000 to be allocated on the basis of $120,000,000 for authorized mass transportation projects in each State, in accordance with priorities established by responsible State officials and the Commissioners of the Port Authority acting pursuant to legislative authorization and commitments to the holders of Port Authority obligations." (pp. 21-22) • • •